SUPREME COURT OF THE UNITED STATES.

No. 338.

OTIS NEWTON, APPELLANT,

VS.

JARVIS HOWE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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5 *Bill of complaint.*

To the honorable the justices of the circuit court of the United States for the first circuit within and for the district of Massachusetts, sitting in equity:

Jarvis Howe, of Milford, in the district aforesaid, and a citizen of the United States, brings this his bill of complaint against Otis Newton, of Westboro', in said district, and a citizen of the United States.

And thereupon your orator complains and says that Reuben L. Lewis, then of Worcester, in said district, and a citizen of the United States, was, on and before the second day of March, in the year 1858, the original and first inventor of a new and useful improvement in boot-trees, which was not known or used before said Lewis's invention; that the said Lewis, the said invention not having been at the time in public use or on sale with his consent or allowance for more than two years, made application to the government of the United States for their letters patent for the said invention, and thereupon, to wit, on the said second day of March, in the year 1858, said letters patent, bearing said date, signed by the Secretary of the Interior, and countersigned and sealed with the seal of the Patent Office by the Commissioner of Patents, did issue to the said Reuben L. Lewis, granting to him, his heirs, executors, administrators, and assigns, for the term of fourteen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention, as by the said letters patent, or a certified copy thereof, were produced and shown to your honors, will more fully appear.

And your orator further shows unto your honors that afterwards, to wit, before the first day of April, in the year 1865, the entire right, title, and interest in, to, and under said letters patent, became by mesne assignments duly recorded in the United States Patent
6 Office, vested in your orator, all which, by said assignments and the certificates of the recording thereof thereon indorsed, or by certified copies thereof, now produced and shown to your honors, will more fully appear.

And your orator further shows unto your honors that at the October term of the United States circuit court for the district of Massachusetts, in the year 1860, one Benjamin Godfrey, in whom all right, title, and interest in, to, and under said letters patent, then were, by assignment from said Lewis, duly recorded, as by said assignment, or a certified copy thereof, now produced and shown to your honors, will more fully appear, impleaded one Charles T. Eames, in an action at law wherein he declared against him in a plea of trespass on the case for a violation of the exclusive privileges of the said Godfrey, secured to him by the said letters patent and assignment as aforesaid, by making, using, and vending to others to be used boot-trees embracing in their construction and mode of operation the new and useful improvement reserved to said Godfrey as aforesaid; to which action the said Eames duly appeared and pleaded that he was not

guilty in manner and form as the said Godfrey had alleged against him, and gave notice of various matters which he intended to prove at the trial of said action to show the said letters patent to be invalid.

And the said action was continued from term to term of the said court until the October term thereof, in the year 1861, at which term the same came on for trial before the jury, who returned a verdict for the defendant, the court, after hearing the parties by their counsel, having ruled that said letters patent were inoperative and void, and judgment was duly rendered upon said verdict.

Whereupon the said Godfrey duly filed his bill of exceptions to the said ruling of the court, which was duly allowed, and said action was removed to the Supreme Court of the United States by a writ of error, in which court, at the December term thereof, the same was argued by the respective counsel of said Godfrey and said Eames; whereupon the said court at the said term thereof issued their mandate to the said circuit court reversing the judgment of the said circuit court, and awarding a venire facias de novo; which man-
7. date was duly entered in said circuit court at the May term thereof in the year 1864.

And your orator further shows unto your honors that said Reuben S. Lewis and said Godfrey, his assignee, have always from the time of the granting of said letters patent up to the time of the assignment to your orator as hereinbefore stated, and that he, your orator, has always, since the time of said assignment, and in the exercise of the full and exclusive right and liberty so granted as aforesaid, made, constructed, used, and vended to others to be used the said improvement so patented, and boot-trees embracing the same; and have had and maintained, until the infringement hereinafter complained of, exclusive possession of the said improvement and invention under and by virtue of said letters patent, and have never acquiesced in any invasion or infringement of their said rights.

And your orator further shows unto your honors that the respondent herein having full knowledge of the premises, and in violation of your orator's exclusive right and privilege as aforesaid, and utterly disregarding the same, has, since the assignment of said letters patent to your orator, without the license of your orator, at Westboro', in said district, and various other places in the United States, purchased and used, and still continues to use, boot-trees embracing the improvement so secured to your orator, but how many your orator is unable to set forth, but he prays that the respondent may discover and set forth in answer to this bill which boot-trees were manufactured and sold without license of your orator and against his will and in violation of his exclusive right and privilege as aforesaid.

And your orator further shows unto your honors that the respondent herein does not deny that said boot-trees by him purchased and used as aforesaid embrace the improvement so secured to your orator, but pretends that they are old and second-hand, and merely repaired; whereas your orator charges that they are substantially new, if not

absolutely new in all their parts, and that the pretence that they are old boot-trees repaired is untrue, and is adopted merely for the purpose of evading submission to your orator's exclusive right and privilege secured to him as aforesaid.

And your orator further shows unto your honors that he will
8 be subject to great and irreparable injury unless he shall obtain from your honors the relief hereby sought.

To the end therefore that the said respondent may upon his corporal oath full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and he thereunto distinctly interrogated, according to the best of his knowledge, information, and belief, and more especially that he may answer and set forth:

1st. Whether he has not purchased since the first day of April, 1865, and when, one or more, and how many, machine boot-trees?

2d. Whether said trees have not the backs combined with the stretching-rod by means of guides and cross-heads; and if not, how the backs are combined with the stretching-rod?

3d. Whether the same were not purchased from E. L. Shumway, of Worcester, in said district?

4th. Whether any parts of the same were, when purchased, old or second-hand; and if so, which parts were old or second-hand?

5th. Whether he has not used such boot-trees, and for how long a time?

6. Whether he has paid or agreed to pay any money or other article of value for said boot-trees, and how much?

And that the said respondent may answer the premises, and that he may be decreed to account for and pay over to your orator all such gains and profits as have accrued to him from using such boot-trees, and that he may be restrained by an injunction issuing out of this honorable court from making, using, or vending to others to be used any one or more of said boot-trees embracing substantially and in principle the same construction and mode of operation as the new and useful improvement secured to your orator as aforesaid, and that the said boot trees now in possession of the respondent may be destroyed or delivered up to your orator, and that the respondent may pay to your orator the damages by him most wrongfully sustained, and for such other and further relief as the nature of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also the writ
of subpœna directed to said Otis Newton, of Westboro', in the
9 district of Massachusetts, commanding him to appear and answer to this bill of complaint, and to do and receive what to your honors may seem meet.

And your orator will ever pray.

JARVIS HOWE.

J. E. MAYNADIER,
Solicitor and Counsel for Complainant.

UNITED STATES CIRCUIT COURT, *District of Massachusetts, ss:*

Then personally appeared Jarvis Howe, the above-named complainant, and made solemn oath that he has read the above bill, and understands the contents thereof, and that all the matters therein stated as of the knowledge of the complainant are true, and that as to all other matters therein stated he verily belives them to be true.

Before me.

[SEAL.] N. AUSTIN PARKS,
Notary Public.

10 *Answer.*

The answer of Otis Newton, defendant, to the bill of complaint of Jarvis Howe, complainant.

This defendant, for answer to the said bill, or such parts thereof as this defendant is advised are material to the answer, saith, he denies that Reuben L. Lewis was the original and first inventor of the improvement in boot-trees, described and claimed in the letters patent granted to said Lewis on the 2d day of March, 1858, and referred to in said bill; but this defendant is informed and believes, and therefore avers, that said improvement was, prior to the time of the alleged invention thereof by said Lewis, known to and used by Emory L. Shumway, of Worcester, at Worcester, and at sundry other places in said district.

And this defendant is informed and believes, and therefore avers, that the application upon and by reason of which the said letters patent, in complainant's bill mentioned, were issued to said Lewis, as alleged in said bill, was made by said Lewis on the 27th day of April, A. D. 1857; and this defendant admits the grant to said Lewis of the said letters patent, pursuant to his application therefor, made and filed in the Patent Office on the 27th day of April, 1857, and denies that said letters patent of the United States were issued to said Lewis upon any other different or prior application to that made by him as aforesaid, upon the said 27th day of April, A. D. 1857.

And this defendant says, that if any application had been made by said Lewis for letters patent of the United States, prior to said 27th day of April, 1857, such prior application was not the same on which said letters patent, issued on the 2d day of March, 1858; but such prior application was refused, and rejected and withdrawn, and abandoned, and came to nought, at or before the time when
11 application was made by said Lewis for the letters patent in said bill of complaint mentioned.

And this defendant, furthering answering, says that said alleged invention, or inventions substantially the same, were in public use, or on sale, with the consent and allowance of said Lewis, for more than two years before the said 27th day of April, 1857, and denies the contrary thereof to be true, as in said bill of complaint alleged, or intended to be alleged.

And this defendant, further answering, says he is informed and believes, and therefore avers, that in 1854, and long before applica-

tion made by said Lewis for said letters patent, the said Lewis, together with E. L. Shumway, of Worcester, as copartners, made and sold boot-trees containing the invention alleged to belong to said Lewis, and that afterwards the said Shumway continued to make and sell boot-trees containing the invention claimed in said letters patent, the said Shumway having the authority, permission, and consent of the said Lewis, and of one B. D. Godfrey, then assignee of one-half of all the rights of said Lewis in the said alleged invention of said Lewis, as this defendant is informed; and whether such authority or consent was ever withdrawn from said Shumway, or when, if ever, it was so withdrawn, this defendant is ignorant; but this defendant for more than twelve years prior to the beginning of this suit, has had in his possession and use boot-trees procured by him of said Shumway, containing the improvement described and claimed in the said letters patent of the said Lewis, and this defendant was not aware, until very recently, that the right of said Shumway to make and sell boot-trees, containing said alleged improvement, was questioned by any one.

And this defendant is ignorant, whether or not the complainant is the assignee of said letters patent of said Lewis, and requires proof thereof.

And this defendant admits the allegations in said bill contained respecting the suit by Godfrey, as assignee of said Lewis, against one Charles T. Eames, except so much as relates to the ruling of the court on the trial of said suit; and this defendant is informed that the judgment in said suit in favor of defendant was reversed,
12 because it was not left to the jury to determine whether or not the application for the same letters patent was more than two years after the public use and sale of said invention, with the consent of said Lewis, and not otherwise.

And this defendant is informed and believes that the plaintiff in said suit never again brought the same to trial, and that the defendant therein, Charles T. Eames, after said trial, continued to make and sell boot-trees containing said alleged invention, or like those charged to be infringements, under a claim of a lawful right to do so, without the consent of the owner of said Lewis's patent, and under letters patent granted to said Eames on the 27th day of May, 1856, in which said improvement, or a like improvement, is described and shown, until this complainant became a licensee under the said patent of said Eames, and this defendant is informed and believes that a suit was commenced against the said E. L. Shumway in the name of the same Godfrey, for alleged infringement by hm, Shumway, of said Lewis's patent, and said suit was abandoned and discontinued before any judgment therein.

And this defendant denies that either the said Lewis or the said Godfrey or said complainant have at any time been in the exercise of the full and exclusive right purporting to be granted by said letters patent, or that the public have acquiesced therein, or that any adjudication has ever been had upon the validity of said letters patent, except such as is adverse to the title thereby set up.

And this defendant is a manufacturer of boots and shoes, and has employed a small number of the Shumway boot-trees, with shifting backs, as claimed in said letters patent in his business, and for his own use, and not otherwise; and he is able and willing to pay the damages to which the complainant may be entitled (if any) for such use of said boot-trees, the right to use which was purchased from said Shumway, as this defendant believed. And this defendant says the complainant has an adequate remedy at law, both against said Shumway and himself for the alleged use by him of said few boot-trees, and that he, this defendant, ought not to be subjected to the expense usually attending the production of evidence in equity, where the damage to complainant (if any) is insignificant compared
13 with the expense of litigation, the defendant being merely a purchaser, and not a producer of the machine patented.

And this defendant, for answer to interrogatories in said bill proposed, and not otherwise answered herein, says he has, since April, 1865, purchased two boot-trees, not new, of said Shumway, that he paid for the same the sum of $50, that their backs are combined with their stretching-rods by means of two inclined guides and cross-heads, and has used the same since the time of purchase as aforesaid; that said trees, and both of them, were purchased by him as second-hand trees, and that the price was fixed accordingly.

And this defendant says, that inasmuch as according to his best information and belief the said Lewis was not the original and first inventor of the invention in said letters patent described, and inasmuch as the said invention, as this defendant is informed and believes, was made use of by E. L. Shumway, as early at least as December, 1854, and from that time afterwards with the knowledge and consent of Reuben L. Lewis, the alleged inventor, and of Benjamin D. Godfrey, the assignee of said inventor's right, so long as they or either of them continued to have any interest or title either in the said invention or the said letters patent, granted in 1858, and until sales made to this defendant by said Shumway of boot-trees, and purchases thereof by this defendant of said Shumway in good faith, and in the belief of the right of said Shumway to sell the same to him, the said complainant ought not to have the benefit of the extraordinary remedies exercised by courts of equity until he shall first have brought a suit at law, and prosecuted the same to trial with success, against this defendant.

All which matters and things this defendant is ready to maintain and prove, as this hon. court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

OTIS NEWTON.
F. A. BROOKS,
Defendant's Solicitor.

14 DISTRICT OF MASSACHUSETTS, *Suffolk, ss:*

MARCH 31, 1866.

Then Otis Newton, above named, made solemn oath that he knew the contents of the foregoing answer by him subscribed; that the

same, so far as made upon his own knowledge is true, and so far as made upon information and belief, he believes it to be true.

Before me.

[SEAL.] J. E. M. GILLEY, *Notary Public.*

15 *Replication.*

This repliant, saving and reserving unto himself all and all manner of advantages of exception to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

By J. E. MAYNADIER,
Solicitor and of Counsel.

16 *Specification of Lewis's patent.*

The United States Patent Office to all persons whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted R. L. Lewis, March 2d, 1858, No. 19,508.

In testimony whereof, I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this ninth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[SEAL.] T. C. THEAKER.

No. 19,508.

The United States of America to all whom these letters patent shall come:

Whereas Reuben L. Lewis, of Milford, Mass., has alleged that he has invented a new and useful improvement in boot-trees, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said
17 Reuben L. Lewis, his heirs, administrators, or assigns, for the term of fourteen years, from the second day of March, one thousand eight hundred and fifty-eight, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Reuben L. Lewis in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the patent office has been hereto affixed.

Seal of the Patent office.

Given under my hand at the city of Washington, this second day of March, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States of America the eighty-second.

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

J. HOLT,
Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

To all whom these presents shall come:

Be it known that I, R. L. Lewis, of Milford, in the county of Worcester, and State of Massachusetts, have invented an improvement in boot-trees, and that the following is a full, clear, and exact description of the principle or character which distinguishes it from all other things before known, and of the usual manner of making, modifying, and using the same, reference being had to the annexed drawing.

Fig. I is a perspective of the machine in working order.

Fig. II a section through the back (D) referred to.

Fig. III a section through the other part of the tree, showing the manner of operating the back.

Fig. IV are the foot pieces shown in two positions, removed from the tree.

18 Fig. V exhibits an upper view of the arrangement shown in fig. 3, in section.

Fig. VI a perspective of part of the back.

Fig. VII a view of the T-shaped ends of projections (B B.)

My invention consists in an improvement in revolving or swivel boot-trees, whereby the backs of the same may be readily detached for the purpose of using different sizes of backs. To effect this object I combine the back (D) with the stretching rod, as follows: (B B) are two projections from the axial stretching-rod, the ends (E) of which are T-formed, making cross-heads to run in the inclined

ways or guides (F F.) These guides are connected with the back as shown in figs. 2 and 3, and are inclined sufficiently to furnish the necessary leverage in distending the boot-tree by the action of the cross-head connected with the axial stretching rod. This rod has a longitudinal movement given to it in one direction by the bent lever (H,) operated by the treadle (K,) and is moved in the opposite direction by the helical spring (L,) and by its movements back and forth the tree is distended and contracted by the action of the cross-heads upon the flanges (a a) of the inclined guides. The cross-heads are entered within the inclined guides at the point (M,) and it will follow that when the axial rod is moved to this point the back at once becomes detached from the tree, and another size may be substituted without loss of time. The shifting of backs with common boot-trees is readily done; but with the mounted swivelling boot-tree it has not been hitherto done except by shifting the whole tree, and as it is necessary to shift back frequently in boot making, the convenient shifting of the backs becomes a great saving of expense, labor, and time.

What I claim as my improvement in mounted swivelling boot-trees, is combining the backs with the axial stretching-rod, by means of the inclined guides (F,) and cross-heads (B,) or other equivalent means, so that the backs can be readily changed in the manner and for the purposes herein set forth.

R. L. LEWIS.

Witnesses:
CHAS. G. PAGE.
R. T. CAMPBELL.

19 *Testimony for complainant.*

Deposition of Levi P. Bradish, taken, subscribed, and sworn to before N. Austin Parks, examiner.

May 8th, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Levi P. Bradish; age, 42; residence, Milford, Mass.; occupation, boot-treer.

Int. 2. How long have you been a boot-treer?

Ans. Twelve years.

Int. 3. Where do you work now, and in what capacity?

Ans. I work for the Godfrey Boot & Shoe Co., Milford, as foreman of the treeing department.

Int. 4. Did you go with Mr. Howe last fall to the shop of Mr. Otis Newton, in Westboro'? If so, state the day and month as nearly as you can, and what your principal purpose was.

Ans. I did—in the month of October I think—I've no means of telling the day from my own memory, or date. My principal purpose was to examine some boot-trees.

Int. 5. State what boot-trees you examined, if any, and if Mr. Newton told you from whom and when he purchased them, state what he said.

Ans. I looked at two, but didn't examine but one particularly. It was a youth's boot-tree. Mr. Newton said they were trees that he bought of Mr. Shumway for second hand trees. My impression is that he said he bought them some time in June previous.

Int. 6. Please look at the tree now shown you marked "Exhibit Bradish," "T. G. Kent, notary public," and state how that resembles or differs from the youth's tree mentioned by you.

(Objected to for cause)

Ans. It is essentially the same style or pattern. I couldn't say that it differed at all.

Int. 7. Can you point out any difference, essential or otherwise? If so, please do so.

(Objected to as above.)

Ans. I could not, sir, because I recognize it as being Mr. Shumway's style of boot-tree.

Int. 8. What was the object of your examination of the youth's tree in Mr. Newton's shop?

Ans. Mr. Howe wished my opinion whether it was a new or second-hand tree.

Int. 9. What experience have you had which enables you to form an opinion upon that subject? State generally.

Ans. I have had the care and direction of having new trees made and old ones repaired for the past ten years.

Int. 10. What was the opinion you formed in regard to the youth's tree in Mr. Newton's shop?

(Objected to.)

Ans. My opinion was that it had every appearance of being a new tree.

Int. 11. Please state how carefully you examined it.

Ans. We looked at each part of the tree as carefully as we thought necessary.

Int. 12. Please state in detail what parts, if any, you believed to be old.

Ans. I shouldn't state that I believed that any of the parts were old, yet possibly they might have been. Some of the feet irons, as they are called, I thought might have been old.

Int. 13. Where was that tree when you saw it?

Ans. In the attic of the shop occupied by Mr. Newton.

Int. 14. State whether it was in use or not when you saw it.

Ans. It was.

Int. 15. Was the attic used as a lumber room or work room?

Ans. A work room. There was another man at work treeing in the same room.

(Cross-examination declined.)

L. P. BRADISH.

21 Deposition of Jarvis Howe, taken, subscribed and sworn to before N. Austin Parks, examiner.

MAY 8, 1866.

Int. 1. Are you the complainant in this case?

Ans. I am.

Int. 2. Did you go last fall with Mr. Bradish to the shop of Mr. Otis Newton, in Westboro'? If so, state the day and month, as well as you can, and what your principal object was.

Ans. I went with Mr. Bradish to Mr. Newton's shop in Westboro' about the 6th of October. My principal object was to examine a youth's tree fully with Mr. Bradish, in order to establish whether it was a new or second-hand tree.

Int. 3. Had you been there for such purpose before? If so, how many times, and at what times?

Ans. I had been there before for the purpose of seeing Mr. Newton and his trees. The first time I went I think was in August, 1865; the next time, I think, in September. The first time I was there I didn't see Mr. Newton, but saw the trees, and the youth's tree in particular.

Int. 4. Why did you not see Mr. Newton on that occasion?

Ans. I think the men said he was in Boston.

Int. 5. Did you see him when you were there the second time? If so, please state what passed between you in relation to that youths' tree.

Ans. I saw him the second time, and I don't think I could state all that was said between us in relation to the trees and the youths' tree.

Int. 6. State the substance of it.

Ans. The substance of the conversation was this: It was in relation to the trees being old or new, and about the right of Mr. Shumway to make new trees, etc.

Int. 7. Was anything said about a tariff? If so, please state the substance of what was said.

Ans. I think there was something said in relation to it. In case the trees were new that I should demand my regular tariff.

22 Mr. Newton said that they were bought (the youth's and boy's trees) for second-hand trees.

Int. 8. If Mr. Newton told you from whom and when he had purchased these trees, state what he said.

Ans. He said he bought the trees from Mr. E. L. Shumway, and he had them in the month of June, 1865.

Int. 9. Look at the one shown you marked "Ex. Bradish, T. G. Kent, notary public," and state how it resembles or differs from the youth's tree you have mentioned.

(Objected to for cause.)

Ans. The tree resembles the one I saw at Mr. Newton's as near as two trees are usually made by Mr. Shumway of that size. Perhaps I had better make one exception: That is, that one of my toggles or swivels is on these that was taken off probably from one of my trees.

Int. 10. What experience have you had which enables you to form an opinion upon the question whether a tree be a new tree or a repaired one?

Ans. I have manufactured boot-trees for the last three years or more and repaired them.

Int. 11. What was the opinion you formed in regard to the youth's tree in Mr. Newton's shop?

(Objected to.)

Ans. That it was a new tree.

Int. 12. How carefully did you examine it?

Ans. I examined it in every particular.

Int. 13. Was Mr. Newton ever informed of the conclusion you had come to? If so, when and by whom first?

Ans. When I saw Mr. Newton the second time I informed him that I had seen the tree and that it was new.

Int. 14. Was Mr. Newton present when you and Mr. Bradish were there? If so, state the substance of what passed between you.

Ans. He was present; he took us up stairs to the room where the youth's tree was; showed it to us; said that was the tree he had of Mr. Shumway. Mr. Bradish and myself examined the tree. The conversation was then about settling for the tree and paying me the tariff. Mr. Newton, I think, mentioned that he had been led into this through Mr. Shumway. He showed the price which he paid for the trees in his books. The price was $50.

23 Int. 15. Please state in detail what parts of that tree, if any, you believe to be old.

Ans. Not any, in my opinion.

And in answer to interrogatory propounded by F. A. Brooks, esq., counsel for respondent, deponent saith:

Cross-int. 1. Did Mr. Newton have in his possession at and before this suit was brought more than one boot-tree, to wit, that called "the youth's tree" in this deposition, for which you claimed a tariff of Mr. Newton, or which you considered to be any infringement of your rights under the patent of R. L. Lewis?

Ans. Not to my knowledge.

Cross-int. 2. Why, in your judgment, did the single youth's tree purchased of Shumway by Newton in June, 1865, stand on any different footing as to infringement from the others in Newton's possession of the same kind? Was it because you supposed the single youth's tree was made by Shumway and sold to Newton after you had become an assignee under the Lewis patent, to wit, after January, 1865?

(Objected to.

Ans. Because Mr. Shumway had no license to make trees under the Lewis patent when he made this youth's tree.

Cross-int. 3. Shumway had such license when he made the other trees sold to Newton, had he not?

(Objected to, as involving a question of law.)

Ans. I don't know whether Shumway had a license or not, but I

understood Mr. Godfrey, the licensing party, to say that he had not had any for the last 3 or 4 years.

(Statement of Mr. Godfrey objected to.)

Cross-int. 4. Do you know, or were you never informed, Shumway held a license from Mr. Godfrey, your assignor, to make boot-trees?

(Objected to.)

Ans. I've understood from Mr. Godfrey that he had formerly a license.

Cross-int. 5. At what time did such license cease, if you know?

(Objected to as being matter not open in the direct examination.)

Ans. I was informed by Mr. Godfrey that that license was
24 terminated on extension of the Howe patent, October 24th, 1862, and that he had so notified Mr. Shumway.

Cross-int. 6. It is not, then, true that you consider all boot-trees made by Mr. Shumway prior to October 24th, 1862, to have been made by authority of Godfrey, of whom you purchased the Lewis patent?

(Objected to.)

Ans. I so suppose; I don't know what might be proved about it.

Cross-int. 7. Do you, as assignee under the Lewis patent, claim a right to hold parties who use boot-trees made by E. L. Shumway prior to October, 1862, liable to you for infringement, either in this case or in any other?

(Objected to, as being a question of law upon which Mr. Howe's counsel will decide.)

Ans. No.

Cross-int. 8. This suit is, then, prosecuted upon the assumption on your part that the youth's tree, so-called, used by defendant, was not made by Shumway prior to October, 1862, and upon this ground alone, is it not?

(Objected to.)

Ans. This suit was brought because, in my opinion, this tree was made since October, 1862.

Cross-int. 9. Is there any fact within your knowledge which proves or shows the date or time when the youth's tree in controversy was made?

(Objected to.)

Ans. There is.

Cross-int. 10. Please state such fact.

(Objected to.)

Ans. The pattern that the casting was taken from was made since March, 1864.

Cross-int. 11. Do you know from what particular pattern the youth's tree complained of was made? Did you see the work done, or learn from Mr. Shumway about it; I mean the work on this youth's tree?

(Objected to.)

Ans. The casting was made from the new pattern which Mr. Shumway has made since 1864—March, 1864.

Cross-int. 12. Did you ever see the identical pattern from which Newton's youth's tree was cast?

(Objected to.)

Ans. I never did.

Cross-int. 13. Now, then, can you swear that you know, as a fact, it was made from a pattern which did not exist till since March, 1864?

(Objected to.)

Ans. I bought all of Shumway's boot-tree patterns in the spring of 1863, and used them in my manufacture of trees till the spring of 1864, and when I closed up business with Mr. Shumway, I took them all away to Milford, and they have been in my possession ever since.

Cross-int. 14. You mean then to swear that you know as a fact that the pattern used in making the tree complained of did not exist prior to March, 1864, because when you purchased Shumway's patterns and until March, 1864, you had not seen a pattern like that from which this youth's tree was made? Is it so?

(Objected to.)

Ans. Yes. I had never known a tree to be made prior to March, 1864, having that style of casting by either Shumway, myself, or anybody. I mean a youth's tree.

Cross-int. 15. And because you had not known of any such pattern, you swear that none such ever existed before that time. Do you not?

(Objected to.)

Ans. I do. (Witness having said, "This needs some explanation," the defendant's counsel objects to any further answer not strictly responsive to the question.) Witness then said, Mr. Shumway sold and billed to me all his boot-tree patterns, in the spring of 1863, and I never saw a youth's tree or a boy's tree made from patterns like this till since the summer of 1864.

Cross-int. 16. What would have been the retail market price for the two boot-trees bought by Newton, in June, 1865, if in fact new and sold as such?

Ans. If they were my own and new, they would have been $95. I mean the two together, $50 and $45 without tables or benches.

Cross-int. 17. Have you, since the decision of his honor, Judge Lowell, ordering an injunction against the use of this single youth's tree till the further order of the court, issued and distributed circulars, in which you assume to inform the public that it has been determined by the said court, in this case, in substance, that you and Mr. Lewis, as your licensee, are the only parties who can lawfully make and sell machine boot-trees.

(Objected to as containing an erroneous construction of said circular, and generally.)

Ans. I have issued a circular, but whether or not it is in the sense that the question implies, I can't say. I produce the circular, (marked Exhibit I, N. A. P., ex'r.)

Cross-int. 18. Is it not true that at the hearing upon the motion

for preliminary injunction referred to in your circular, and for the purposes of that hearing only, the defence of want of novelty set up in defendant's answer was waived, or not relied upon?

(Objected to.)

Ans. If I understand the question, I think it was not argued at all.

Cross-int. 19. Is it true, then, as set forth in your circular, that your "claim to be the only person authorized to manufacture and sell machine boot-trees, except R. L. Lewis," "was sustained by the court," in and by the order passed April 25th, in this case?

(Objected to.)

Ans. I think it is true.

Cross-int. 20. Do you not know that the court decided merely that Mr. Newton be enjoined from using a single boot-tree, and this in a case where the defendant did not choose to rely upon the defence of want of novelty contained in his answer; which defence will be open to him at the final hearing of this case?

(Objected to.)

Ans. I understand that the court decided that Mr. Newton was enjoined from using a single tree. As to the rest of the question, I don't think I understand it fully.

Cross-int. 21. Did the court decide anything as to the validity of the Lewis patent, as regards any invention prior thereto, made by Mr. Shumway or any one else?

(Objected to.)

Ans. I don't know as I can say.

Cross-int. 22. Have you not in your circular stated that the decision as made proves yourself to be the only party authorized to make and sell machine boot-trees, except Lewis, or substantially so?

(Objected to on the ground that the circular speaks for itself, and generally.)

Ans. I don't say that it proves it in fact. I begin by saying, "that I claim to be," and I believe my claim to be true and just.

Cross-int. 23. Did you or not by your circular intend that the public should understand from it that such a decision had been made as is set forth in the last question?

(Objected to as above.)

Ans. I did mean to have them so understand.

27 Direct resumed:

And in reply to direct interrogatories answered by J. E. Maynadier, esq., deponent saith:

Int. 16. (De bene esse.) What was Shumway's connection with the boot-tree business, after you bought his patterns, till the spring of 1864? Refer to your 13th cross-answer before replying.

Ans. Mr. Shumway worked for me by the day.

Int. 17. Do you know what Shumway charges for his new trees?

Ans. As near as I can learn, $25 or $30 for youths', and $30 to $35 for boys'. I have this only from what people tell me.

(Defendant objects to the whole answer as hearsay.)

Int. 18. (De bene esse.) Did you ever read the written opinion of the court, in which they granted your injunction against Newton?

Ans. I have not.

JARVIS HOWE.

Deposition of R. L. Lewis, taken, subscribed, and sworn to before A. N. Austin Parks, examiner.

JULY 6TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. R. L. Lewis; age, 36; residence, Worcester, Mass.; occupation, boot-tree manufacturer.

Int. 2. Have you a license from any one? If so, from whom?

Ans. I am licensed by Jarvis Howe, of Milford.

Int. 3. Are you the inventor of removable back trees? If so, when was that invention made?

Ans. I am the inventor, and the invention was made in the spring of '54.

Int. 4. From '48 to '54, what was your business?

Ans. Most of the time boot-treeing.

Int. 5. What kind of tree did you use at first?

Ans. The slide or wedge tree.

28 Int. 6. When and where did you first see a machine tree of any kind, and what kind was it?

Ans. The first machine tree I recollect seeing was, I think, in '51, in P. G. Wood's shop in Upton; it was called by treers there the "Bliss tree" or "brass tree" or "patent tree;" I know it by all those names.

Int. 7. Where were you in the early part of 1849, and had you seen one of these trees then?

Ans. I was in Upton. I have no recollection of seeing one until '51. I had heard of them, but have no recollection of seeing them until I saw them in P. G. Wood's shop.

Int. 8. Did you ever use brass trees? If so, from what time to what time, as near as you now recollect?

Ans. I have, from some time in '52 till the spring of '54.

Int. 9. Are those trees now used? If not, what have taken their place?

Ans. I don't know of any of those trees that are in use, the changable back tree or movable back tree have taken their place.

Int. 10. What gave you the idea of making removable back trees? (Objected to as immaterial and irrelevant.)

Ans. The necessity of filling different sized boots with the same tree was the cause of it.

Int. 11. What are the advantages of the removable back trees over the brass tree?

Ans. In the removable back tree you can have two or more backs for the different sizes. In a brass tree you are confined with one size of back to six sizes of boots, as they are generally made.

Int. 12. When did you make the first model of your invention, and what did you do with it?

Ans. I made it in May or June of '54. I showed it to different boot manufacturers; finally I showed it to B. D. Godfrey, of Milford, and made a bargain with him to have the thing patented and introduced, and a working machine made from it.

Int. 13. Did you have a working machine made? If so, who made it, and where?

Ans. I had a working machine made in the summer of '54, by C. T. Eames, of Milford.

29 Int. 14. Prior to this time, had you ever seen or heard of any boot-trees which admitted of changing the backs?

(Objected to as immaterial and irrelevant.)

Ans. No, sir, not a machine tree.

Int. 15. Of what other tree except a machine tree?

Ans. The wood or slide trees had two or more backs.

Int. 16. What opportunity had you of knowing what kinds of trees were in use in this part of the country?

(Objected to as immaterial and irrelevant.)

Ans. I had been at work on boots for years; was acquainted with many treers, and familiar with treeing.

Int. 17. What finally became of the model from which your working tree was made?

Ans. It was sent to the Patent Office with an affidavit of A. S. Cook's, of Milford, I think.

Int. 18. When you gave an affidavit in this case, did you see a certified copy of Cook's affidavit with a copy of that model attached? If so, how did that model compare with this one sent to the Patent Office?

Ans. I did see the certified copy of the affidavit and model, and, to the best of my recollection, it was an exact counterpart or duplicate.

Int. 19. Did you make a sale of part of your invention, and an agreement as to its management? If so, with whom? What did you sell, and what was the agreement, and when made?

(Objected to as immaterial and irrelevant.)

Ans. I sold part of the invention, and made a written agreement with B. D. Godfrey in the summer of '54.

Int. 20. Do you know Emery L. Shumway, of Worcester? If so, when did you first know him?

Ans. I do. I first saw him in the summer of '54; knew him by reputation several years before that as a boot-tree maker.

Int. 21. Did you ever see any trees of his make before '54? If so, what kind of trees were they?

Ans. I saw trees of his make of the brass or Bliss kind before '54.

Int. 22. Did you know of his making any other kind before that time?

30 Ans. I did not.

Int. 23. Did Mr. Shumway come to Wood's shop to see you in the fall of '54? If so, please state what tree you were then using, and what passed between you and Shumway.

(Objected to as leading, hearsay, and otherwise incompetent.)

Ans. He did. I was using the experimental tree made from my model by C. T. Eames. Mr. Shumway first stated that he came by request of B. D. Godfrey to see a new boot-tree that I had got up. I showed Mr. Shumway the tree, took it to pieces, and explained as well as I was able the different parts, the improvements over the brass tree, and gave him my opinion of it, and asked his. Mr. Shumway objected to an arrangement that I had for mounting the tree, as being too complicated; he much preferred the way the brass tree was mounted; spoke very highly of the tree itself; thought the changeable back arrangement a capital idea, and stated that he would be very happy to make arrangements to manufacture those trees, as he was then out of business.

Int. 24. Were there any other trees then in that shop? If so, were they in the same room with your tree, and what kind of trees were they?

Ans. There were no other trees in the same room. There were brass and slide trees in an adjoining room.

Int. 25. Did Mr. Shumway say that the idea of changing backs was old—that he had made a tree or trees containing that feature; or did he intimate, in any way, that he had ever before seen or heard of a tree with a changeable back?

(Objected to as leading, and as asking for matters of inference, and as hearsay, and incompetent.)

Ans. He did not say that it was old, or that he had made or seen trees with a changeable back, but stated that that was a great point of the tree, and that it would kill the brass tree deader than hay.

Int. 26. Did you and Shumway ever go into partnership after this? If so, when, as nearly as you recollect, and for what purpose?

Ans. We did form a partnership, I think, the last of November or first of December, 1854, for the purpose of manufacturing those trees. The last work I done for P. G. Woods was November 6th, and I did no work until I went in with Shumway, after that time.

31 Int. 27. Was any other tree like the one made for you by Eames, except that one, made before the first one you and Shumway made?

Ans. Not to my knowledge. C. T. Eames, of Milford, commenced, right after making this experimental tree, to make changeable-back machine trees; but I don't know whether he got any made before Shumway and I got some made or not; I think not.

Int. 28. How did the tree made for you by Eames differ from the one now before you, marked "Bradish, T. G. Kent, notary public?"

Ans. In that tree the front and back both spread from the centre four inclines, instead of two; that is, it had inclines in the front part of the tree as well as the back, and spread from the centre.

Int. 29. While you and Shumway were in partnership, did you make trees like the one just referred to, ("Bradish?") If so, when did you begin to leave off the inclines and cross heads in the front of the tree, and why?

Ans. We commenced making trees like exhibit "Bradish" very soon after we started—within a few months. We were troubled to

make the legs of the machines with four inclines small enough for small-sized boots, and deemed this a more simple and less complicated machine, cheaper made, and better adapted to the wants of manufacturers and treers.

Int. 30. Where did you get the idea of making the front stationary?

Ans. From Eames' tree, of Milford.

Int. 31. What was the agreement made between you and Shumway as to furnishing tools and stock and capital?

(Objected to because it does not appear that any agreement was made for such purpose between Shumway and the witness.)

Ans. I was to furnish the right to manufacture the trees, Shumway to furnish tools and capital necessary to carry on the business. We were to share equal in the cost of the trees outside of tools, shop, etc., and divide the profits equally.

Int. 32. Were the trees then patented? If not, what license was there to be furnished?

Ans. The tree was not patented, but we were making arrangements to apply for a patent as soon as we could.

32 Int. 33. Was there any agreement made to pay a tariff on each tree manufactured? If so, what was the agreement, and with whom was it made?

Ans. There was no agreement between Shumway and myself in regard to paying a specified tariff. There was an agreement between Mr. Godfrey and myself.

(The statement objected to by counsel for respondent.)

Mr. Shumway wished me to procure a right of Mr. Godfrey for certain territory which he specified, which I did. There was no tariff stated at that time, but when I settled with Shumway there was a tariff stated. We soon had orders for trees outside the specified territory, and filled them, by Mr. Godfrey's consent.

Int. 34. Was there any tariff paid in fact? If so, when, by whom, to whom, for how many trees, and what was the tariff?

(Objected to as immaterial and irrelevant.)

Ans. There was. When I closed up with Mr. Shumway I allowed him $5 on each machine made, (fifty-five trees,) as my part of the agreement, as Shumway told me that Godfrey claimed that amount as tariff on each tree.

Int. 35. Before you began to make your trees with stationary fronts, did you and Shumway have any talk about the tree Charles T. Eames was making? If so, state generally what it was.

(Objected to as immaterial and irrelevant, and as hearsay.)

Ans. We did, considerable; that the idea of making the front stationary was a good one.

Int. 36. Can you tell us more exactly when you and Shumway made your first tree with stationary fronts and two cross-bands?

Ans. To the best of my recollection, we made some twelve or fifteen, perhaps twenty, that the front and back both spread; that's as near as I can fix it. It was some time in the spring of '55. I think it might have been in the summer when we made our first stationary-front tree.

Int. 37. Where did you get the patterns you used in the manufacture of the trees with four inclines and cross-heads?

Ans. We made them in the shop, most of them.

Int. 38. Did Shumway have any patterns? If so, what were they?

Ans. He had none except models for feet.

33 Int. 39. When you and Shumway talked about making stationary front trees in place of the four cross head trees, did Shumway say that he had ever seen or heard of a shifting-back tree with stationary front, before he saw Eames's tree, or did he intimate anything to that effect?

(Objected to as immaterial, hearsay, and leading.)

Ans. He did not.

Int. 40. Who did the selling when you and Shumway were in partnership—that is, which of you, if either, went among the manufacturers to solicit orders and recommend the trees?

Ans. Shumway did the principal selling; neither went round amongst manufacturers much.

Int. 41. Can you give the names of any manufacturers who had trees of Shumway and yourself while you were in partnership?

Ans. Yes sir. P. G. Wood, of Upton, had the first tree, I think. E B. Fisher, of Upton, D. W. Batchelder, of West Upton, Timothy S. Stone, of Worcester, Childs & Walker, of Worcester, Joseph Walker & Co., of Worcester, Newton, of Westboro', Rawson & Linnell, of West Boylston, and various others that I cannot call to mind just now.

Int. 42. When did you and Shumway dissolve partnership?

Ans. In the fall of '55, October, I think.

Int. 43. What became of your stock, tools, patterns, etc., when you dissolved?

Ans. Mr. Shumway kept them, and continued the business.

Int. 44. Look at the exhibit now shown you marked "E. B. S., notary public, Lewis No. 1." "E. B. S., notary public, Lewis No. 2," and Lewis No. 3, N. A. P., examiner, and Lewis No. 4, N. A. P. examiner, and state what they are, and when you saw any of them first, if ever before.

Ans. "No. 1" and "No. 2" are old centre piece patterns, used by Shumway and myself when in partnership, also No. 4. No. 3 is a later pattern, and I can't say positively that I ever saw it before.

Int. 45. When did you first make application for your patent?

(Objected to as immaterial.)

Ans. I think in January, '55.

Int. 46. Was there a delay in the granting of the patent,

34 and if so, what did you do in consequence of it?

(Objected to as immaterial.)

The application was rejected, and referred to a patent, issued in 1850, to Upfield, of Ohio. Mr. Godfrey went on to Ohio and bought that patent. Mr. Godfrey afterwards bought another patent, the Jarvis Howe patent, and for some time neglected to make a second application for patent, but finally concluded to make a second application, and requested me to go to Washington for that purpose. I did

so, and by advice of counsel, at Washington, filed a new application, with a new model, and withdrew my first application, and after some delay the patent was granted.

Int. 47. When you got to Washington, why did you not press your first application instead of filing a second one and withdrawing the first?

(Objected to as immaterial.)

Ans. I had made some improvements, and by advice of counsel filed a new application and new model.

Int. 48. Were you advised, as to filing a new application, before, or at the time of withdrawing the first? If so, what was the advice?

(Objected to as hearsay.)

Ans. I was advised to file the second application before I withdrew the first, and did so.

Int. 49. Did you ever intend to abandon your invention to the public and give up your right to the patent?

(Objected to because not relating to facts, and because mere mental condition is not competent.)

Ans. No, sir.

Int. 50. Please look at the tree now before you, marked "Bradish, T. G. Kent, notary public," and state whether it is an old or new tree in your opinion.

(Objected to as immaterial.)

Ans. The tree has evidently been used but very little.

Int. 51. What are the marks of use upon a tree?

Ans. The bearings very soon become smooth from use; those of the journal, cross-heads, and inclined plane, and those in the centre piece, and those of the side brasses in the backs. I should not judge that tree had been used two weeks; the feet soon become marred by pegs in the boots, and the backs inside soon become saturated with oil and colored.

Adjourned to 3 p. m., office of F. A. Brooks.

35 Resumed:

Int. 52. Look at exhibit now shown you, marked C. H. T., No. 1, and at the pattern marked Lewis No. 2, E. B. S., notary public, and state whether or not the centre casting of that tree was moulded from that pattern. Measure the parts, and point out any difference if you find any?

(Objected to as matter of opinion.)

Ans. I have measured the parts and examined them carefully, and compared the pattern with the casting. My opinion is that the casting was taken from that pattern, and that the pattern has been slightly altered since. On the upper part of the centre piece there has been a piece put on, of about three-fourths of an inch on each side, and the standard that prevents the back going up when the tree is spread, or the projecting piece on the back part of the pattern has been enlarged, which shows very clearly. The pattern evidently has been altered several times since made originally, but the alterations that I have mentioned, with one exception, are the only ones I notice

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Ans. We made them in the shop, most of them.

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Ans. The bearings very soon become smooth from use; those of the journal, cross-heads, and inclined plane, and those in the centre piece, and those of the side brasses in the backs. I should not judge that tree had been used two weeks; the feet soon become marred by pegs in the boots, and the backs inside soon become saturated with oil and colored.

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(Objected to as matter of opinion.)

Ans. I have measured the parts and examined them carefully, and compared the pattern with the casting. My opinion is that the casting was taken from that pattern, and that the pattern has been slightly altered since. On the upper part of the centre piece there has been a piece put on, of about three-fourths of an inch on each side, and the standard that prevents the back going up when the tree is spread, or the projecting piece on the back part of the pattern has been enlarged, which shows very clearly. The pattern evidently has been altered several times since made originally, but the alterations that I have mentioned, with one exception, are the only ones I notice

since that casting was taken from it. The socket has been taken down since that casting was taken from it. This alteration also shows clearly in the patent.

Int. 53. Look at the ears which hold the lock, and compare them in the casting and the pattern.

Ans. Those ears have been fitted or filed down in the casting. I think they were cast as the pattern is.

(Answer objected to so far as containing matter of opinion and as not responsive.)

Int. 54. If you see any other differences between the pattern and casting, state them.

Ans. The slot for the back arrangement in the pattern has been lengthened about three-sixteenths of an inch since the casting was taken from it, which clearly shows in the pattern.

Int. 55. Do you find any difference between the casting and the pattern, except in cases where there is a plain indication upon the pattern that it has been altered?

(Objected to as leading, and because assuming that witness is able from inspection of the pattern to judge how it was originally made or the alterations have been made therein.)

36 Ans. No, sir.

Int. 56. Now, bearing in mind all the differences between the casting and the pattern, tell us whether or not, in your opinion, that casting was taken from that pattern, and state how positive you are in that opinion.

(Objected to, first, because witness has already answered the question, and secondly, because it calls for matter of opinion, wherein the witness is not and cannot be expert.)

Ans. In my opinion, the casting was taken from that pattern, and from careful measurement and examination, and from having had a good deal of experience in that kind of casting and patterns, I feel very positive that the casting was taken from the pattern with the alterations that I have named.

Int. 57. When you and Shumway were in partnership, where was your shop?

Ans. On Washington street, in Worcester, known as the Washington street machine shop, occupied by Thayer & Houghton.

Int. 58. Did Shumway ever have a shop there before you and he were there in partnership?

Ans. I think not.

Int. 59. Look at patterns now shown you, marked "exhibit patterns G. D. N., 4 pieces," and state what they are?

Ans. One is a youth's, and one a boy's stretching-rod pattern, one a man's plane pattern, and the other an old style piece for holding a friction roller to go on the upper end of the back for a small tree.

Int. 60. When you and Shumway were in partnership, did you have patterns of that kind, and if so, where did you get them?

Ans. We had. We made them.

Int. 61. From whom did you obtain your stretching-rod casting when you were in partnership, and who ordered them; you or Shumway?

Ans. We obtained our brass castings from Jason Chapin, of Worcester, mostly, our malleable-iron castings from Waitt, Chauncy & Co., of Worcester, mostly. I ordered them mostly while I was with Shumway.

Int. 62. Look at the stamp in the beams of that tree, marked
37 No. 1, C. H. T., and state, if you know, when Shumway first began to use that stamp on his trees.

Ans. He didn't commence using it until after I dissolved with him in the fall of '55, to my knowledge. The first trees I saw marked so by Shumway was after that time.

And in answer to cross-interrogatories proposed to him by F. A. Brooks, esq., in behalf of respondent, deponent saith as follows, to wit:

Cross-int. 1. Do you intend to swear in your last answer that Shumway had not in fact used this stamp before you made his acquaintance?

Ans. Yes, sir; not to my knowledge.

Cross-int. 2. What knowledge have you of what he used before you made his acquaintance?

Ans. I am quite familiar with the trees he manufactured—the brass tree; I am confident there was no such stamp on those trees.

Cross-int. 3. Do you mean to swear that because you had seen no such marks on the brass trees, so called, that you are able to testify under oath that Mr. Shumway never used any marks except those seen by you on the brass trees said to have been made by Shumway?

Ans. Yes, sir, to my knowledge.

Cross-int. 4. Is your knowledge confined to what you saw on the brass trees?

Ans. No, sir.

Cross-int. 5. State what other knowledge you had before making Shumway's acquaintance of any marks or stamps used by him, and of what he did not use?

Ans. I didn't testify as to what I knew, as regards those stamps, as being before making Shumway's acquaintance. I had no knowledge as to what he did not use before making his acquaintance except the trees I saw of his make.

Cross-int. 6. When first did you see pattern marked "E. B. S. Lewis, No. 2?"

Ans. In the spring or summer of '55.

38 Cross-int. 7. Where has it been since that time?

Ans. I don't know, sir, where it has been all the time.

Cross-int. 8. State, as far as you know, where it has been during any part of that time.

Ans. I haven't seen it since I dissolved with Shumway, until about two or three months ago, I should judge.

Cross-int. 9. Who then showed it to you?

Ans. It was brought to my shop by an expressman.

Cross-int. 10. From Mr. Howe, the complainant in this case?

Ans. Yes, sir.

Cross-int. 11. Before that where was it when you last saw it?

Ans. I think in Shumway's shop when I was in company with him; possibly at the foundry. I can't say positive where was the last place I saw it.

Cross-int. 12. Who made the pattern?

Ans. I think the journal was turned out of the shop. The rest of the pattern was made in the shop.

Cross-int. 13. By whom was the rest of the pattern made, and where was the journal turned?

Ans. Mr. Shumway made the pattern after the journal was turned, and he got the journals turned out of the shop, not having a lathe.

Cross-int. 14. When was this? and how do you recollect the circumstance?

Ans. It was only in the summer of 1855, or perhaps late in the spring of that year. I can't tell positive which. I recognize the pattern as one of our old patterns. I used to tend the founders, take the patterns from the founders, shellac and block them when they needed it, and was very familiar with them. Mr. Shumway was a pattern maker, and made all the small patterns and the centre-piece patterns after the journals were turned.

Cross-int. 15. Have you any recollection of his making this particular pattern?

Ans. No, sir; not independent of the other patterns.

Cross-int. 16. Or any other particular pattern?

Ans. Not independent one from another. I recollect perfectly well about his making the patterns.

39 Cross-int. 17. Have you any recollection of his altering this pattern? "No. 2," I mean.

Ans. I recollect his altering various patterns. He altered them often.

Cross-int. 18. Last question repeated.

Ans. Not independent from the others.

Cross-int. 19. Were they all altered?

Ans. I think all our centre-piece patterns were altered more or less.

Cross-int. 20. Is there anything about this particular pattern, "No. 2," which enables you to distinguish it from the other patterns which you say were owned between you and Shumway when in partnership, or to speak especially with regard to it?

Ans. I recollect it as our boy's pattern.

Adjourned to 9 a. m., 6th inst.

Resumed:

Cross-int. 21. Has this pattern any special mark which you remember for eleven years?

Ans. No, sir.

Cross-int. 22. Do you then mean to swear that you identify this as seen by you eleven years ago, or only that it is like such as you and Shumway had eleven years ago?

Ans. I mean to swear that it is like it precisely, I think.

Cross-int. 23. This pattern is not of the same sort first used by you and Shumway as partners, is it?

Ans. No, sir.

Cross-int. 24. Where are the other different patterns?

Ans. I don't know, sir.

Cross-int. 25. Do you profess to be able, from pattern "No. 2, Lewis," to testify, as an expert, that it was not first made in the form it now has?

Ans. I profess to give it as my opinion.

Cross-int. 26. And in that opinion have you assumed, in your direct examination, the fact to be that it (the pattern) was first made
40 and used in a different form from its present?

(Objected to on the ground that it does not appear that witness has assumed anything.)

Ans. I believe that it was.

Cross-int. 27. Question repeated.

Ans. I believe that it was.

Cross-int. 28. Question again repeated.

Ans. I believe that it was, sir.

Cross-int. 29. And are you unable to give any other answer to the 21st question?

Ans. That's the only answer I can give, sir.

Cross-int. 30. Do you mean to swear that the casting of boot-tree centre-piece "No. 1, C. H. T.," was in fact taken from pattern "Lewis No. 2?"

Ans. I mean to swear, from careful measurement and close examination, that it corresponds with that pattern before it was altered.

Cross-int. 31. Will you answer the last question more directly?

Ans. (Witness asks for repetition of the question, and the question being repeated answers.) No, sir; I don't mean to say that that particular casting was taken from that particular pattern, but that the casting corresponds with the pattern, by careful measurement, previous to the alterations which show on the pattern. I didn't see the casting made.

Cross-int. 32. Does not this centre-piece differ from any casting which could be taken from "pattern No. 2," as it now is?

Ans. Yes, sir.

Cross-int. 33. Or as it ever was, so far as you know?

Ans. Not so far as I believe.

Cross-int. 34. Please answer the last question more directly?

Ans. I believe that that casting was taken from that pattern, and that the pattern had been altered since, (counsel for complainant here suggested to the witness, "Mr. Brooks asks you for what you know," witness continues) "but I do not know this."

Cross-int. 35. Has not your previous testimony proceeded upon this belief as a fact?

(Objected to as too metaphysical for a plain man to answer, and calculated to convey a wrong idea to the witness.)

41 Ans. Not a fact, but as a belief, an opinion.

Cross-int. 36. In your 52d direct answer you say that certain alterations in this pattern specified are the only ones you notice since that casting (centre piece, No. 1, C. H. T.) was taken from it. Have you any knowledge that this casting was taken from it at all?

Ans. No, sir; simply a belief.

Cross-int. 37. And is that belief founded merely upon your opinion that, in a certain altered state of pattern "No. 2," such a casting might be produced from it or might have been so produced?

Ans. Yes, sir; with the pattern complete; all the pattern is not there that would be necessary to produce a casting like that.

Cross-int. 38. Have you any knowledge that pattern No. 2 was ever in the form necessary to produce this casting of model "C. H. T.," or if so, was ever used in that shop?

Ans. No, sir; but I believe it.

Cross-int. 39. Do you consider that you are called to testify from knowledge or from belief?

(Objected to as irrelevant, immaterial, impertinent, and generally absurd and a waste of time.)

Ans. I sha'nt testify to anything that I don't know or believe.

Cross-int. 40. Did you see pattern "No. 2" made?

Ans. I saw patterns made like it.

Cross-int. 41. Please answer the last question.

Ans. I can't swear that I did.

Cross-int. 42. You do not know, I suppose, whether it is now as first made, or not, do you?

Ans. I don't know, but think it is not.

Cross-int. 43. Are you willing to answer questions without introducing, in all cases, your belief when the same is not asked?

(Objected to as above.)

Ans. Yes, sir.

Cross-int. 44. Do you then know that pattern No. 2 ever existed in any other than its present form?

Ans. No, sir.

Cross-int. 45. Was your first working machine tree put in public use in the summer or fall of '54, and so continued afterwards
42 by you?

Ans. As an experimental tree. It never was sold. It was used publicly in the shop for treeing boots.

Cross-int. 46. Was it put in use publicly and so continued for treeing boots, and from what time to what time?

Ans. The tree was put in P. G. Wood's shop, at Upton, and I treed forty cases of boots on it myself. I cannot state the time when put in or how long I worked on them.

Cross-int. 47. Was it so put in use in the summer or fall of '54, and afterwards continued in such use?

Ans. Not afterwards continued to my knowledge. It was put in use, as I have stated, in the summer and fall of '54.

Cross-int. 48. Was it ever withdrawn from use and what became of it?

Ans. After treeing those boots I left the tree there; it was not

mine. The next I knew of it it was in B. D. Godfrey's possession, of Milford.

Cross-int. 49. Was this tree, or others like it, continued in use for some years after 1854, with your knowledge or consent?

Ans. No other tree was ever mounted like it, to my knowledge. Trees with four inclines were made and used publicly and with my consent from Dec. and Jan., '54 and '55, and after.

Cross-int. 50. From and after the summer or fall of 1854 were not boot-trees, such as you claim as your invention, in public use and on sale with your consent and allowance for some years?

Ans. Yes, sir.

Cross-int. 51. Did you not dispose of your invention, as then understood, in the summer or fall of 1854, to B. D. Godfrey?

(Objected to, it having already appeared that whatever disposition was made of it was made in writing.)

Ans. Yes, sir; of part of it.

Cross int. 52. Did not Chas. T. Eames, of Milford, make one or more boot-trees in 1854, having one incline and cross-head with changeable back, and were not the same put in use or sold with your knowledge and allowance?

Ans. I don't know, sir.

Cross-int. 53. Have you no knowledge about such a boot-tree made by Mr. Eames?

43 Ans. Yes, sir; I have knowledge of one incline tree, but I cannot testify where they were made or when they were first made.

Cross-int. 54. Whenever first made by Mr. Eames, were they made without objection from you?

Ans. Yes, sir; I had no management of the invention or patent after selling to B. D. Godfrey.

Cross-int. 55. Did you see such a tree made by Eames in Godfrey's shop in 1854 or 1855?

Ans. I think I did in 1855.

Cross-int. 56. You say that in going into partnership with Shumway, you put into the concern the right to make your new style of trees, and that after dissolving with him, Mr. Shumway bought out stock and materials, and continued the business. All this was with your approbation and consent at the time, was it not?

Ans. I havn't said such a thing, sir, not as I understand that statement.

Cross-int. 57. Will you then now state in answer to the question how it was?

Ans. Mr. Shumway made a proposal to me to go into partnership, which was this: I should procure the right to make trees in a certain territory, which he specified, and I did so. When we dissolved, Shumway kept tools, patterns, etc., and continued on in the business. This was done with my knowledge and consent.

Cross-int. 58. Did you not, in fact, when entering into partnership with Shumway, yourself enjoy the right to make boot-trees, such as you claimed to have invented?

Ans. Not till I had made an arrangement to that effect with Mr. Godfrey.

Cross-int. 59. Had you not at that time sold altogether to Mr. Godfrey?

(Objected to as above.)

Ans. No, sir; but I had given Mr. Godfrey the whole control and management of the patent.

Cross-int. 60. Please refer to your 31st direct answer, and state whether the right you was to furnish to the company was the right to make your trees or some other right.

Ans. Yes, sir; the right I referred to was the right to make my improvement.

44 Cross-int. 61. Do you now mean that you could not furnish this right until you had procured it from Mr. Godfrey?

Ans. Yes, sir.

Cross-int. 62. Did not Mr. Godfrey then hold another boot-tree patent granted to Jarvis Howe in 1848, and was it not the right under this patent which you had to procure from Mr. Godfrey?

Ans. Mr. Godfrey did not own that patent to my knowledge at that time; and it was not the Jarvis Howe patent that I bought a right to make trees under.

Cross-int. 63. What other patent had you any occasion to buy a right under of Mr. Godfrey?

Ans. No patent, but my improvement, which was not patented at that time.

Cross-int. 64. And no patent, therefore, had been then applied for, had there?

Ans. No, sir; not at that time.

Cross-int. 65. Did you then buy of Mr. Godfrey a right under any title which did not exist, and had not begun to exist?

Ans. I bargained for such a right, sir.

Cross-int. 66. What were the terms of this bargain with Mr. Godfrey?

Ans. Mr. Godfrey gave me permission to go on, manufacture and sell trees in a certain territory. I had then sold but one-half of my improvement to Mr. Godfrey, and I was to go on and manufacture trees in a certain territory in consideration of my half.

Cross-int. 67. You neither paid nor agreed to pay Godfrey anything, did you?

Ans. Not at the time this arrangement was made.

Cross-int. 68. Did you at any other time for this right to make your improvement pay Godfrey anything, or agree so to pay him?

Ans. Yes, sir; indirectly, through E. L. Shumway.

Cross-int. 69. What did you pay him? Did you furnish any money for that purpose?

Ans. Two hundred and seventy-five dollars for what trees was made while in company with Shumway, deducted from my share of the profits.

45 Cross-int. 70. Did Godfrey receive this money to your knowledge, or did you ever pay it to him?

Ans. I did not pay it to him; but Mr. Godfrey told me that Mr. Shumway did.

(Latter part of answer objected to by respondent.)

Cross-int. 71. Do you answer that Mr. Shumway agreed with you to pay Mr. Godfrey for the right to make the improvement in boot-trees, which you claim as your invention, during your partnership with him?

Ans. I swear that he deducted that amount from my share of the profits for that purpose stated.

Cross-int. 72. And is it also true that this right was put into the concern by you, and that you were not to pay Godfrey anything therefor, as you continued the owner of one-half the improvement after the bargain with Godfrey?

Ans. That was the arrangement made with Mr. Godfrey originally, and this is the way we settled it. We made and sold trees outside of the specified territory in the original bargain, and this is the way we settled for it.

Cross-int. 73. Have you not testified that the original arrangement with Godfrey allowed you to make your style of trees without paying anything to him in consideration of your ownership or interest in the improvement, and that this right was furnished by you to the firm of Shumway & Lewis?

(Objected to on the ground that the testimony is in writing, and will speak for itself, and because counsel for defendant is plainly mistaken.)

Ans. Yes, sir.

Cross-int. 74. Were not the centre-piece patterns of your four incline trees similar to the patterns for the two inclines?

Ans. They were similar in some respects, but in many respects different.

Cross-int. 75. Are you positive that you discontinued making the four inclines before dissolving with Shumway?

Ans. No, I am not positive; but I think we did.

Cross-int. 76. If you did, it was Shumway's idea to do so, was it not?

Ans. No more than mine, sir. I think we were both of that idea.

46 Cross-int. 77. This was not done until Mr. Eames' boot-tree with one cross-head and incline was in use; am I right?

Ans. You are right.

Cross-int. 78. Are you aware that Mr. Eames received a patent for his boot-tree with single incline and cross-head in March, 1856, or thereabouts?

Ans. Yes, sir.

Cross-int. 79. Did the patent in suit issue upon your petition or application to the Patent Office as made in April, 1857?

(Objected to as being matter of record.)

Ans. I think it did, sir.

Cross-int. 80. Was not the specification of this application or de-

scription of a boot-tree differing in many respects from the boot-tree as first made by you in 1854?

(Objected to as above.)

Ans. Yes, sir.

Cross-int. 81. I understand you to have testified that after 1854, and before April 24, 1857, you had made improvements, which you wished to patent. These improvements were described in this application of April, 1857, were they not?

(Objected to as above, and because it has been decided by the Supreme Court of the United States that the two applications described substantially the same thing. Counsel for defendant objects that such is not the case, and if it were, the counsel for complainant has no right to render any such statement in this deposition.)

Ans. Yes, sir.

Cross-int. 82. (De bene esse.) When withdrawing from the Patent Office in April, 1857, certain papers and model then there, and receiving back a sum of money previously deposited, did you expect any further benefit from the papers and money so withdrawn?

Ans. I didn't withdraw any model, sir; but I did expect further benefit from my application. I did not expect any further benefit from the papers I withdrew, because I had filed a new application for the same thing.

Cross-int. 83. (De bene esse.) Have you not testified that the specification filed in April, 1857, described a different machine from that just made and used by you for treeing boots? (Objected to as above.) Or is it not so in fact?

47 Ans. Yes, sir, it was different in some respects, but embraced the same features as the first machine.

Cross-int. 84. (De bene.) Did it have, or specify, the four inclines of the first machine, or the means of supporting the leg used in the first machine, or the catches in the central rod of the first machine?

(Objected to as above.)

Ans. It did not.

Cross-int. 85. (De bene.) Did it then have any part of the first machine, except so far as the first machine had been varied or improved in consequence of what had been seen in use upon boot-trees made by Eames, as above stated?

(Objected so as being utterly unintelligible to the counsel for complainant.)

Ans. As I understand the question, it did.

Cross int. 86. (De bene.) State what parts of the first machine, as the same existed before it was modified with reference to Eames boot-tree, are specified or described in the specification filed in April 1857?

(Objected to as in cross-int. 79.)

Ans. The method of spreading the tree so that the backs can be readily changed.

Cross-int. 87. (De bene.) And do you testify now that in this respect the application filed in April, 1857, was for the same thing

as was described and specified in the papers withdrawn from the Patent Office at that time?

(Objected to as above.)

Ans. It is for the same thing shown in the model, and I think described and specified.

Cross-int. 88. (De bene.) Why then did you file an application and new model in April, 1857, and then apply for a patent thereon?

Ans. Because I was advised to by counsel.

Cross-int. 89. (De bene.) Was it not also with the idea on your part that the specification of April, 1857, differed materially from any specification before then on file, if any?

Ans. Yes, sir; I had made additional improvements that I wished to get patented.

Cross-int. 90. (De bene.) Did you not then understand that, in filing the application of April, 1857, you steered clear entirely, and gave up entirely what was contained in the papers, if any, before then on file in the Patent Office?

48 Ans. No, sir; decidedly not.

Cross-int. 91. (De bene.) The papers used in April, 1857, and the model were all new, and different from any previously used by you, were they not?

Ans. No, sir, not all different. They embraced the same features, with additional improvements.

Cross-int. 92. (De bene.) What paper used in 1857 was not new and prepared at that time?

(Objected to as above.)

Ans. I don't know of any.

Cross-int. 93. (De bene.) Did you, in 1857, understand that two sets of papers and two models could be used togetner, and both be the subject of one and the same patent?

Ans. No, sir.

Cross-int. 94. (De bene.) The application of April, 1857, contained improvements not made or known to you in January, 1855, did it not?

Ans. Yes, sir.

And in answer to direct examination, resumed by J. E. Maynadier, esq., deponent further saith:

Int. 63. You say the centre piece of Exhibit "C. H. T. No. 1," differs from any casting which could be taken from pattern Exhibit "Lewis No. 2," as it now is. Would there be any other differences between a casting taken from that pattern, as it now is, and that centre piece, than are plainly shown to be alterations of the pattern, as it now is?

(Objected to as hypothetical, and because it assumes, as facts, that certain alterations have been made in the pattern, without evidence thereof.)

Ans. No, sir; I think not.

Int. 64. You say you do not know that the pattern "Lewis No. 2" ever existed in any other than its present form. What is your

opinion as to this, upon what is it based, and how strong is it? State generally.

49 (Objected to because subject-matter of direct examination, and because incompetent as matter of opinion.)

Ans. My opinion is that it did exist in a different form. The pattern itself shows clearly to any mechanic to have been altered in various ways and places. I am very positive, indeed, of this.

Int. 65. How was it you finally paid Godfrey the $275, when the first agreement you made with him was that you might make and sell trees in a certain territory, in consideration of your half-ownership?

(Objected to because it does not appear that witness ever paid Godfrey that sum.)

Ans. We made and sold trees outside of this specified territory, and Mr. Godfrey claimed $5 on a tree license, for the privilege of making them, which I paid to Mr. Godfrey through Shumway.

Int. 66. Was that payment made in pursuance of any agreement between you and Godfrey, or between Shumway and Godfrey? If not, how did you know that Godfrey claimed that tariff?

(Objected to as above.)

Ans. It was paid by an arrangement made between Shumway and Godfrey, and paid by me as my bargain was with Shumway. My bargain with him was for me to furnish the license or right. Mr. Shumway told me that Godfrey claimed the tariff.

Int. 67. You say you are not positive that you discontinued the manufacture of the four incline trees before you dissolved. Tell us whether you are positive or not that you did manufacture two cross-head trees before you dissolved.

(Objected to because gone into on direct examination, and leading.)

Ans. I am positive. I feel very positive that the patterns were changed, and castings were made. I will not swear that the trees were made. I think they were.

Int. 68. In withdrawing your first application, did you in fact receive back any money? If not, state what was done with the money you were entitled to, in fact.

Ans. I received the money, sir.

And in answer to cross-examination, resumed by F. A. Brooks, esq., deponent saith as follows:

Cross-int. 95. Are you positive that the only claim of God-
50 frey was founded upon your use of your boot-tree improvements, while you were in partnership with Shumway?

Ans. I am positive that I paid for no other claim.

Cross-int. 96. Will you answer the question directly?

Ans. I don't know what Godfrey had in his mind. He might have had other claims unbeknown to me.

Cross-int. 97. Did he not own the Howe patent before you dissolved with Shumway?

Ans. I don't know when he bought the Howe patent. I know that before I dissolved with Shumway, Bliss, owner of the Howe patent, had complained to Godfrey that the trees we were making

infringed the Howe patent, and Godfrey finally bought the Howe patent, but when I can't say.

Cross-int. 98. If you and Shumway settled with Godfrey only for those boot-trees made outside of certain territory, what was that territory?

(Objected to as an incorrect assumption.)

Ans. We did not settle with him only for those made outside, but for all made.

Cross-int. 99. I understood you to have testified that your interest in the invention was deemed equivalent to a license to you to make trees within certain territory, and that for such trees Godfrey had no claim against you. Was not this so?

Ans. That was so understood when I originally made the arrangement with Godfrey, but he took a different view of the matter when we settled, and claimed five dollars each on all trees made.

Cross-int. 100. Before you settled, had not Godfrey acquired an interest under some other boot-tree patents?

Ans. I don't know.

Cross-int. 101. If he had not, what right had he to make any claim upon you and Shumway, and could he do so without violating his agreement?

Ans. I know that he did so. I don't know what his rights were. We hadn't lived up to our agreement; we had made trees outside of the territory. He did very differently from the arrangement first made between us. If you call that violating the agreement, he did so.

51 And in reply to direct interrogatory resumed, deponent saith:

Int. 69. Why then did not you refuse to pay the tariff that he claimed?

Ans. Because I wished to fulfil my agreement with Mr. Shumway.

R. L. LEWIS.

Deposition of Robert Woodman, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 5, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Robert Woodman; age, 43 years; residence, Westboro', Mass.; occupation, boot-treer.

Int. 2. When did you learn to tree boots, who taught you, and what kind of a tree did you use?

Ans. I learned in August, '53, from Rixford Nelson, sometimes called Chauncy Nelson. I used a brass tree.

Int. 3. Do you know Nelson's real name?

Ans. Sometimes we call him Chauncy and sometimes Rixford. I believe his real name is Chauncy C. Nelson.

Int. 4. Did you ever work for Otis Newton, of Westboro'? If so, when first?

Ans. Yes, sir; first in August, '53.

Int. 5. What kind of trees did he have then?

Ans. Mr. Rixford Nelson's brass tree and two wedge trees; the old-fashioned wooden trees we used to use.

Int. 6. How long were you with him at that time?

Ans. Till July, '54.

Int. 7. What other trees did he get before you left?

Ans. Some boys' trees, some youths' trees, and one man's tree—five in all.

Int. 8. What kind of trees were these?

Ans. Brass trees.

52 Int. 9. What do you mean by brass trees? Describe them fully as possible.

Ans. A tree with brass backs not removable, as they are now, with wooden feet, same as now, only they didn't fasten the same way.

Int. 10. How many treers worked with you for Mr. Newton in Union block in the spring of '54, and who were they?

Ans. Seven treers. Mr. C. Nelson, his brother, Merrill Nelson, and his brother, Warren Nelson, a man named Austin Wallace, a man named Hobbs, a man named Gorham, and a man named Gibson.

Int. 11. Please describe how the shop was arranged, and in what part of it each tree was.

Ans. The man's tree was in the southwest corner, the two youths' trees were on the southwest side of the shop, near the railway, the boy's tree (Rixford Nelson's) was in the southeast corner, and the other two boys' trees followed right on the east gable-end of the building.

Int. 12. What other trees did Mr. Newton have, except those you have mentioned?

Ans. Wooden wedge trees.

Int. 13. Where did you go when you left Mr. Newton's shop, and why did you leave the shop?

Ans. I went to Mr. Gilbert Tufts', in Westboro', haying through the month of July. I left because business slacked up, and there was not enough for us to do.

Int. 14. What did you do for the next year or two after that?

Ans. I went to Pennsylvania, and worked in the iron mines till the next October twelvemonth, ('55.)

Int. 15. When did you go to treeing again, and where?

Ans. In April, '56, for Mr. George B. Brigham, in Westboro'.

Int. 16. Did he have any shifting back trees?

(Objected to.)

Ans. He did not.

Int. 17. When did you first see a shifting back tree, and where?

(Objected to.)

Ans. The first I saw was at George B. Brigham's, in Westboro'. I could not tell exactly when. I had been at work there a long time before we had any of them.

Int. 18. Look at the tree now shown you marked "Bradish,

53 T. G. Kent, notary public," and state how that compares with the trees Brigham got while you were there.

(Objected to as immaterial and irrelevant.)

Ans. This is somewhere about the same pattern as those we got. Some of them had different swivels to what this has.

And in answer to cross-interrogatories propounded to him by F. A. Brooks, esq., deponent saith as follows, viz:

Cross-int. 1. Do you know where Mr. Newton got the trees mentioned by you in your answer to the 8th direct interrogatory?

Ans. He got them of Mr. Shumway. He was the first one that I heard of that made these trees—brass trees, I mean.

Cross-int. 2. How do you know that Mr. Newton got these trees from Mr. Shumway?

Ans. Mr. Shumway came to the shop to see how the trees worked.

Cross-int. 3. Did you ever go to Mr. Shumway's shop?

Ans. I did not, sir.

Cross-int. 4. What tree did you work on at Mr. Newton's shop?

Ans. On a boy's tree to learn on to begin with. Sometimes on a youth's tree, according to what work we had in. I had no particular tree to work upon.

Cross-int. 5. How do you know that these were brass trees?

Ans. Because I did not use any others at that time.

Cross-int. 6. Were these trees set up at the time they were first used by you and afterwards?

Ans. Some were, and some were set up after we got into Union block.

Cross-int. 7. Did you set any of them up?

Ans. I couldn't say whether I did or not. The carpenter was there setting the registers for the trees to go into on to the benches.

Cross-int. 8. How do you know that these trees had no shifting backs?

Ans. Because I never seen any one until after I came back from Pennsylvania and went to work for Mr. Brigham. I didn't know there was such a thing.

Cross-int. 9. Not knowing there was such a thing as boot-trees with shifting backs, did you examine particularly these trees, ob-
54 tained by M. Newton, in order to ascertain for yourself their precise construction, and whether there was any difference between them and Nelson's tree or others which you had seen before?

Ans. I did not examine to see whether there was any particular difference or not, till I seen these removable back trees.

Cross-int. 10. When you saw these removable back trees, did you examine Mr. Newton's trees particularly?

Ans. I did not, sir. I was not at work for Mr. Newton then.

And in answer to direct interrogatories, resumed by J. E. Maynadier, esq., deponent saith as follows:

Int. 19. You are now familiar with brass trees and shifting back

trees; tell us which of these Mr. Newton had, and how positive you are of that fact, and why you are positive?

(Objected to, because it does not appear that witness is familiar with different kinds of trees, and because the examination has once been gone over.)

Ans. He had the brass trees. I am sure that I never worked on any other kind but them for Mr. Newton while I worked for him. There was not any other kind in the shop. These brass trees and wooden-wedge trees were the only ones I had ever seen in his shop, and when I left his shop I had never seen a removable back tree.

Int. 20. What kind of trees have you worked on since Brigham got his shifting back trees?

Ans. On men's shifting back trees.

ROBERT WOODMAN.

Deposition of Benjamin B. Proctor, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 5, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Benjamin B. Proctor; age, 43 years; residence, Ashland, Mass.; occupation, boot-treer.

Int. 2. Did you ever work for Abraham and Charles H. Tilton? and if so, how long did you work for them?

Ans. I have worked for them. I think most of the time that they were in partnership, although I am not positive.

55 Int. 3. Where were you at work when they dissolved?

Ans. For them.

Int. 4. What kind of trees were used there?

Ans. The old-fashioned slide tree.

Int. 5. Where did you work after they dissolved?

Ans. For Abraham Tilton.

Int. 6. What kind of trees did he use while you worked for him?

Ans. The old-fashioned slide tree.

Int. 7. When did you leave him, and where did you go?

Ans. Some time in '55 or '56, I am not positive, think in '55 though. I went to Chas. H. Tilton's.

Int. 8. What kind of tree did you use when you went to work for Chas. H. Tilton, and what kind of trees did he have in his shop then?

Ans. I used the old-fashioned slide tree when I first went in there, but I'm not positive whether there were any other kinds of trees there when I first went there or not. But while I was there he got in several other kinds of patent trees.

Int. 9. What kinds were those?

Ans. The changeable back tree.

And in answer to cross-interrogatories propounded to him by F. A. Brooks, esq., deponent saith as follows, to wit:

Cross-int. 1. How do you fix the date of your first using changeable boot-trees?

Ans. I don't know that I fixed any date of the time. I don't remember the date of the day.

Cross-int. 2. Have you any means of telling, or any particular memory as to the time you went to work for C. H. Tilton?

Ans. No, I don't know as I have.

Cross-int. 3. Do you know that Abraham and Chas H. Tilton used any other tree than the old-fashioned slide tree during the time you worked for them?

Ans. I've no recollection of any other. I know I didn't work on any other.

Cross-int. 4. From anything that you know to the contrary, might they not have had other trees at that time?

Ans. Oh, I suppose that they might have had them. I wouldn't swear that they had not.

BENJ. B. PROCTOR.

56 Deposition of John Loynd, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 5TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. John Loynd; age, 39; residence, Westboro', Mass., occupation, boot-treer.

Int. 2. Where did you work in July, '65?

Ans. A year ago to-day I went to work for Otis Newton.

Int. 3. What tree did you work on there at that time?

Ans. One of Shumway's, a youth's tree.

Int. 4. When you began to use that tree did you see any marks of use on the feet? If so, what were they?

Ans. I did not.

Int. 5. State fully all the marks of use you saw on that tree or any part of it.

Ans. The only marks I saw on the tree was in the bearing of the cross-head on the centre piece.

Int. 6. When you began to use that tree, whether or not had the bearings been oiled?

Ans. I didn't see that they had.

Int. 7. Were they oiled before you used it? If so, by whom?

Ans. Not that I know of, I didn't see any oil on it. I oiled it before I used it myself.

Int. 8. State whether or not there were any marks of blacking around the top part of the tree.

Ans. I didn't see any.

Int. 9. Look at tree now shown you, marked "Youth's G. D. N;" examine it carefully, and state whether or not it is the same tree you worked on at Newton's in July, '65.

Ans. That's the tree, I believe. It was the only one in the shop of that kind.

Int. 10. Are you sure that the backs are the same backs that were used in that tree. Look at the inside of the back on the edge

57 near the lower part, and state whether or not the backs of that tree were dented as those backs are.

Ans. I don't remember them dents.

Int. 11. How long did you use that tree? Up to what time?

Ans. I don't remember the day I got through working there, but I worked on it all the time excepting one or two days. It was in November I stopped working.

Int. 12. Was there any other youth's trees in Mr. Newton's shop? If so, how many?

Ans. Only one more that I know of.

Int. 13. Do you see any differences between tree marked "youth's" and the other youth's tree in Mr. Newton's shop?

Ans. Yes, in the other one the brass touched the wood; there was no show of iron down the side.

Counsel for respondent declines to cross-examine.

JOHN LOYND.

Deposition of Henry E. Dorman, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 6TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Henry E. Dorman; age 36; residence, Worcester, Mass.; occupation, cigar and tobacco dealer.

Int. 2. Do you know Emery L. Shumway? If so, when did you know him first?

Ans. I do. I have known him, I should think, a dozen or fifteen years.

Int. 3. Did you ever work for Wm. R. Bliss? If so, at what time; where was his shop; and what his business?

Ans. I have worked for him in 1851 and 1852; his shop was in Worcester, Merrifield's building, Union street; his business was manufacturing sewing machines and boot-trees.

Int. 4. What kinds of boot-trees?

58 Ans. The Howe patent. It was an iron and brass tree, and operated by toggle motion.

Int. 5. What was your occupation while at work for Bliss?

Ans. I did the iron work to the boot-trees.

Int. 6. What was your trade then?

Ans. Machinist.

Int. 7. Did Mr. Shumway work there at the time? and if so, in the same room with you?

Ans. He did work in the same room most of the time.

Int. 8. Did Bliss have more than one room before May, 1853; and how many?

Ans. He did. There were two rooms that we worked in, and there was a third room, a private room for examining a new machine, —a pegging machine. I don't know whether Bliss had anything to do with the room, however; but I used to go in there sometimes, and I've seen him in there.

Int. 9. Was Shumway then employed by Bliss? If so, what work did he do?

Ans. He was, as superintendent of the boot-tree manufactory.

Int. 10. Did he do any part of the work on the trees himself? If so, what part?

Ans. He did the wood work.

Int. 11. Do you know what his trade had been?

Ans. A wood-worker, or pattern-maker.

Int. 12. How long did you and Shumway work for Bliss? Until what time?

Ans. My best recollection is for a year or more. I should think from May, 1852, till the next May or June.

Int. 13. Were you ever in partnership with Bliss; and if so, who composed the firm? When was the partnership formed, and for what purpose?

Ans. I was. The firm went in the name of E. L. Shumway & Co. Mr. Shumway, Mr. Bliss, and I composed the firm. It was formed in the spring of 1853, or summer of that year, for the purpose of manufacturing boot-trees.

Int. 14. When was this firm dissolved, and where was its place of business?

59 Ans. Its place of business was in the same rooms Bliss had in Union street. It was dissolved in the spring of 1854.

Int. 15. What did Shumway do when the firm was dissolved?

Ans. I don't know that he was in any business during the summer.

Int. 16. What did you do?

Ans. I continued to manufacture the boot-trees.

Int. 17. On your own account, or for some one else; and if for some one else, for whom?

Ans. For Mr. Bliss.

Int. 18. Where did you work; in what rooms; and where were you up to January, 1855?

Ans. In the same rooms that the business had been formerly carried on in till June, 1854; the day of the fire that burnt Merrifield's building. From June to January, 1855, I was in Worcester. I started a shop on Bridge street, in what was called Litch's building, and continued the manufacture of boot-trees till January, 1855.

Int. 19. Were you on Manchester street after the fire, and before January, 1855?

Ans. Yes. I meant Manchester, not Bridge street.

Int. 20. During all the time you worked for Bliss, and while you were in partnership with him, what trees were made?

Ans. The Howe machine.

Int. 21. Did Shumway make any other trees, to your knowledge, during that time? If so, what kind?

Ans. No, sir; he didn't to my knowledge.

Int. 22. Was he engaged during the whole of that time in the manufacture of trees? If so, what kind?

Ans. His whole time was taken up in the business of making the Howe trees.

Int. 23. Was any other kind of tree manufactured in Merrifield's building during that time? If so, what kind?

Ans. Not to my knowledge.

Int. 24. Did you ever see any other kind of tree in the shop in Merrifield's building during that time? If so, what kind?

Ans. No other tree, unless it was the old-fashioned wood or slide-tree.

Int. 25. Did Bliss and Shumway & Co. repair trees as well
60 as manufacture? If so, what kind of trees did they have there for repair from time to time?

Ans. E. L. Shumway & Co. repaired trees, not Bliss & Co. They had the Howe patent; it was the only tree that was meddled with at all.

Int. 26. Up to the time Shumway left the firm in 1854, did you have any knowledge of his having made any other than the Howe tree? If so, what kind?

Ans. I had no knowledge of his making any other.

Int. 27. Up to 1855, what kind of trees were in use, so far as you know?

Ans. I never knew of any other in our vicinity than the Howe and the old slide tree.

Int. 28. Do you know anything as to the attempted introduction of any other than the Howe tree?

Ans. There was a Mr. Sampson that was experimenting on a tree; it never was used to my knowledge.

Int. 29. Did you ever hear Shumway speak of any other tree except the Howe tree up to the time he left the firm? If so, what tree was it?

Ans. I think I heard Mr. Shumway say something (what Mr. Shumway said objected to by respondent) about a patent tree that was invented in some State out west. I don't remember the State nor the man's name; I've heard it; I can't recollect it now.

Int. 30. Was it Upfield?

(Objected to as above.)

Ans. That was the name.

Int. 31. Were there any other manufacturers of machine trees to your knowledge in this part of the country during that time?

Ans. Not to my knowledge.

Int. 32. Up to the time Shumway left the firm had he ever told you that he had ever seen, made, or heard of any tree with shifting or changeable backs, or did he ever intimate anything of that kind?

(Objected to as leading and as hearsay.)

Ans. I've no recollection of hearing him speak of any tree with changeable backs.

Int. 33. Up to the year 1855, had you ever seen or heard
61 of a tree with shifting backs? If so, when and from whom?

(Objected to as immaterial.

Ans. Not to my recollection.

Int. 34. Did you know R. L. Lewis before that time?

Ans. I did not.

Int. 35. Did Shumway ever work before '51 on the brass tree, or Howe tree? If so, state where, and how you know it.

(Objected to as immaterial.)

Ans. If I recollect right, I should think it was 1851, or about that time that I first knew of his working on trees; I mean on the Howe tree.

Int. 36. I believe you worked at Court Mills for the Plough Co. before '51. Wasn't Shumway employed there at that time in the same shop with your brother, and if so, what did they manufacture in that shop?

(Objected to as immaterial.)

Ans. There's where I first knew him; I can't say whether he spent all his time in the building there, or a portion of the time, as I wasn't in their room very often; if I recollect right, the room was hired and occupied by a man named Goodale, whose business was jobbing.

Int. 37. Didn't they manufacture trees in the shop where your brother and Shumway worked, and if so, what kind of trees?

(Objected to as above.)

Ans. The Howe machine was made there.

Int. 38. What kind of feet did that tree then have?

Ans. Cast-iron.

Int 39. Where did you get your composition castings for trees up to '55?

Ans. At Jason Chapin's foundry; it's possible some were got at Wheeler's.

Int. 40. Look at patterns now shown you, marked "Exhibit patterns G. D. N., 4 pieces," and state whether, up to the time Shumway left, you had any castings of that description.

Ans. No, sir, I never saw such patterns up to that time.

Int. 41. Who sold the trees principally while you worked for Bliss, and while you were in partnership with him and Shumway?

62 Ans. Mr. Shumway, generally; after Shumway left the firm I sold them.

Int. 42. Up to the time Shumway left the firm, did he work at any other shop excepting Merrifield's building? If so, where?

Ans. Not to my knowledge; I never missed him.

And in answer to cross-interrogatories propounded to him by F. A. Brooks, esq., deponent saith:

Cross-int. 1. You are not on good terms with Mr. Shumway, are you?

Ans. As far as I am concerned, I am.

Cross-int. 2. Has there not been ill-feeling between you and him?

Ans. There has.

Cross-int 3. Did not that ill-feeling arise during the continuance of the partnership?

Ans. It did.

Cross-int. 4. Did you not complain to Shumway that he neglected the business of the firm?

Ans. No, sir; I never had occasion to.

Cross-int. 5. Was he not away a good deal?

Ans. No more than his business would require, I should say.

Cross-int. 6. How frequently was he in the same room with you?

Ans. We both worked in the same room when we were in copartnership.

Cross-int. 7. Did you always work in the same room together?

Ans. We only had one room when we were in business together.

Cross-int. 8. Mr. Bliss had another room in the same building, did he not, in which he carried on another kind of business disconnected with that of the partnership?

Ans. Not Mr. Wm. Bliss, while we were in copartnership in Worcester; he was located in Boston.

Cross-int. 9. Did not Mr. Wm. R. Bliss have a sewing machine room in Merrifield's building, in which he repaired sewing machines and did stitching, during the partnership of E. L. Shumway & Co.?

Ans. Not during the time of the partnership of Shumway & Co.; he sold that concern to Hood Brothers.

63 Cross-int. 10. Before the partnership did not Mr. Bliss have still another room in which he made sewing machines?

Ans. He did.

Cross-int. 11. Was it not this concern which he sold to Hood Brothers?

Ans. It was the sewing-machine department which he sold to Hood Brothers; the manufacturing and repairing was done in one room; I've no recollection of their doing any stitching.

Cross-int. 12. After the sale to Hood Brothers or Hood, Bottell & Co., did he not have in Merrifield's building another room separate from that of E. L. Shumway & Co., in which he did stitching and little repairs in machines which were not sent to the manufacturing room?

Ans. There was a George Bliss that carried on shoe manufacturing that had a room where he used machines to stitch his shoes; Wm. R. Bliss had no room.

Cross-int. 13. Were not George and William R. Bliss in company at that time?

Ans. I think it was so considered by us, but the stitching room you speak of was carried on in the name of George Bliss; there might have been "company" on it; I don't know.

Cross-int. 14. Do you know of Mr. Shumway being employed by Wm. R. Bliss to superintend the business carried on in the room spoken of as being the room of Geo. Bliss, and with whom Wm. R. was considered a partner—I mean during the partnership, or E. L. Shumway & Co.?

Ans. No; I do not know of it.

Cross-int. 15. Did you ever see Mr. Shumway in that room?

Ans. Yes, sir.

Cross-int. 16. What was he doing there, if you know?

Ans. Sometimes he might be doing one thing, sometimes another; we had to pass through George's room to get to our room.

Cross-int. 17. Will you swear that Mr. Shumway did not make boot-trees in George Bliss's room?

Ans. I'll swear that he never made any there while he and I were in company.

Cross-int. 18. How do you know he did not?

Ans. It would be impossible for him without my knowledge.

64 Cross-int. 19. You mean simply, do you not, that you never saw him at work making trees there?

Ans. My meaning is that he never made trees in any other room than that we hired while he and I were together.

Cross-int. 20. When did you leave the boot-tree business?

Ans. January 1st, 1855.

Cross-int. 21. State whether or not you are able to recollect precisely what patterns were used prior to 1855?

Ans. The only machine that we ever manufactured was the Howe patent machine—the toggle motion machine; we used the patterns that were used on that machine.

Cross-int. 22. Were you paying or allowing anything for the right to manufacture these Howe trees?

Ans. The way the firm was conducted was that Mr. Bliss turned in his patent and machinery against the time and work of the other parties. Mr. Bliss had one-half, and we one-fourth each of the profits.

Cross-int. 23. Your business then was confined to this sort of patent boot-tree, was it not?

Ans. It was.

Cross-int. 24. Did Godfrey afterwards become owner of this patent?

Ans. Not till after I left it, to my knowledge.

Cross-int. 25. Might there not have been such patterns as those marked "Exhibit patterns G. D. N." in Mr. Shumway's possession, while you were in partnership with him, either without your knowing or recollecting it?

Ans. He couldn't have had them in the shop, for if he had I should have known it.

Cross-int. 26. If you had known it, might you not forget it after so long an interval of time?

Ans. No, sir, I think not.

And in answer to direct interrogatories, resumed by J. E. Maynadier, deponent saith:

Int. 43. What were the terms under which you manufactured the Howe tree after Shumway left the firm?

65 Ans. I was to have a percentage of the profits; the rest William R. Bliss had.

H. E. LORMAN.

Deposition of Stephen J. Onion, taken, subscribed, and sworn to, before N. Austin Parks, examiner.

JULY 7, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Stephen J. Onion; age, 39; residence, Milford, Mass.; occupation, boot-treer.

Int. 2. How long have you been a boot-treer, and where did you tree boots first?

Ans. I commenced treeing boots for Willard Bragg, in Milford, in 1848.

Int. 3. What trees did you use there, and what kind of trees were then in use in Milford, as far as you know?

Ans. The slide or wedge tree, which was generally used there.

Int. 4. When did you first see or hear of a machine tree, and where, and what kind of tree was it?

Ans. Somewhere not far from 1850, '49 or 50, I saw a brass tree with wood feet that Wm. R. Bliss brought in the shop of Godfrey & Mayhew, where I was then at work. After his showing up the tree, I ordered one of them. Mr. Shumway came and delivered that tree to me, some time, I think, in the spring of '50. It might have been '51, but I think it was '50.

Int. 5. Had you seen a machine tree before or heard of it?

Ans. I had heard of it. I am not positive whether I had seen it.

Int. 6. What kind of feet did the tree that Bliss brought into the shop have, and state whether this kind of tree was always made with this kind of feet?

Ans. He brought only one pair of wood feet with the tree that he brought into the shop to exhibit. I had heard of the tree
66 before as having cast-iron feet, and I have since seen the old trees with the cast-iron feet on them.

Int. 7. Did any other person order trees of Bliss about that time except yourself, if so, how many were ordered about that time, and who brought those trees and set them up in the shop?

(Objected to as immaterial.)

Ans. Thomas J. Wales ordered one at the same time that I did, and Mr. Shumway delivered it at the same time he delivered mine.

Int. 8. Can you state any fact that causes you to recollect that Shumway brought those trees down and set them up?

Ans. I remember the countenance of the man, and that it was a different person delivered them than I had expected. I remember a conversation we had respecting the use of them; it was brought up in regard to some other person thinking of ordering some of the trees; he told (conversation objected to) how much more we could earn on those trees than we could on the old ones.

Int. 9. Do you recollect the figures that he used?

(Objected to as hearsay.)

Ans. Three dollars a day.

Int. 10. How long did you stay at Godfrey Mayhew's?

Ans. Until the fall of '53.

Int. 11. Where did you go then?

Ans. To George Jones & Son, of Milford.

Int. 12. How many machine trees, and what kind, did they have when you first went there?

(Objected to as immaterial.)

Ans. One brass tree with wood feet.

Int. 13. Did they order other machine trees while you were there,

if so, when, how many, from whom, and how do you know, if you know, from whom they ordered them?

Ans. They did, in December, '53, and January, '54, two, from E. L. Shumway. I stood at the desk beside Appleton B. Jones, of the firm, and I dictated the order to Jones.

Int. 14. Were those trees received? if so, what kind of trees were there, who brought them down and set them up?

(Objected to as immaterial.)

Ans. They were received; one was a long-legged man's tree, and the other a boy's trees, brass trees; I think they were sent
67 by express. I know that I set up the one I used myself. They were sent all ready to set up.

Int. 15. Did you ever take a brass tree to pieces? and describe fully the construction of the brass tree, back, front and the spreading mechanism.

Ans. I have. It is composed of two hollow castings, the front and back cast separately, the side brasses attached to the back, lapping over on to the front of the tree; the mechanism for spreading the tree is a stretching-rod attached to a toggle joint, the cams of the toggle joint fastened to the opposite parts of the tree, one cam to the front and the other to the back of it. The stretching-rod also runs through a spiral spring for the purpose of collapsing the tree, or shutting it up.

Int. 16. Do you know Charles T. Eames, of Milford? if so, did you ever see a tree of a new kind? if so, when, how came you to see it, and describe it?

Ans. I know him. I saw a tree of a new kind in his shop in September, 1854. I lived a near neighbor to him, and he requested me to come down to the shop and see it. It was the tree with wood back and front, both parts spreading, having four inclined planes and cross-heads.

Int. 17. What was the new feature in that tree?

(Objected to, because it don't appear that witness is competent to judge.)

Ans. The changeable back was the greatest.

Int. 18. Up to that time what trees were in use in Milford?

Ans. The old slide tree, and the brass tree.

Int. 19. Was the brass tree known by any other name or names? if so, what?

Ans. We usually called it the Bliss tree there.

Int. 20. Did you ever see trees with four inclines and cross-heads in use? if so, where, when, from whom were they obtained, and under what circumstances?

Ans. Some time in the spring of '55, I think it was March, I prevailed upon a man I was at work for, Amasa Daniels, of Milford, to send for trees of that description to Worcester. He agreed to do so on condition (respondent's counsel objects to every thing
68 Daniels said) that it should'nt cost him anything, provided they didn't operate well. Two trees of that description were sent and tried. We understood they came from Shumway & Lewis. They were tried, condemned, and sent back again.

Int. 21. What was the cause of their failure?

(Objected to as immaterial.)

Ans. The bad operation of the distending apparatus. They wouldn't distend the boot properly.

Int. 22. Is not the same distending apparatus now in general use? Explain more fully why these four inclines and cross-heads tree did not operate satisfactorily.

Ans. It is not; that is, not so many inclines in use. The upper and lower inclines of these trees apparently operated against each other, and if the boot was filled in one part it wouldn't be in the other; that was my experience.

Int. 23. On what terms were these trees ordered?

(Objected to as immaterial.)

Ans. On condition that if they didn't suit us, they would take them back again.

Int. 24. Did you work on either of those trees?

Ans. I did.

Int. 25. Did those trees with four inclines and cross-heads ever come into general use?

Ans. Not to my knowledge.

Int. 26. How many backs did they have?

Ans. Two each.

Int. 27. Did you ever see a tree with stationary front and movable backs; if so, when first and where, and who made it?

Ans. I saw one at Chas. T. Eames's shop, the first one I ever saw then in process of making by him. I think it was April or May, '55.

Int. 28. Did you get a tree of this kind? if so, from whom, when, where were you at work then, and under what circumstances?

(Objected to as immaterial.)

Ans. I bought one of Mr. Eames; I was then at work for Mr. Amasa Daniels, the same as I had been; in May or June, '55, it was delivered. I was to be at the whole risk of the expense in case the tree didn't work; my employer wouldn't have anything to do about it.

69 Int. 29. How did that tree work, and were any more obtained in that shop, by whom, and when?

(Objected to as above.)

Ans. It worked satisfactorily. More were obtained in the shop, by Mr. Daniels, as fast as Mr. Eames could get them out along through the summer and fall.

Int. 30. How many backs did those trees have?

Ans. They all had two, and sometimes three.

Int. 31. You say the four inclines and cross-heads tree that Eames had in his shop in September was the first changeable back tree you ever saw. Up to that time, had you ever heard of any tree with changeable backs of any kind?

(Objected to as immaterial.)

Ans. No machine trees.

Int. 32. Slide trees always had changeable backs, did they?

Ans. Yes, sir.

Int. 33. Up to the time you heard of the Eames tree with sta-

tionary front and changeble backs, had you ever heard of any other tree of that kind?

(Objected to as immaterial.)

Ans. I had not.

Int. 34. Up to that time what other trees were attempted to be introduced?

Ans. A tree called the Upfield tree, and one called the Sampson tree.

Int. 36. With what success?

(Objected to as not calling for knowledge, but for hearsay.)

Ans. The Upfield tree could not be mounted, so that we would not attempt to use it at all, and the Sampson tree could not be mounted so as to be solid enough to suit us. Besides this, the Sampson tree was distended with a hand lever. I both tried these trees myself and saw them tried.

Int. 35. What trees have been generally used since '55?

Ans. The trees with stationary front and changeable back.

Int. 37. Are you acquainted with trees of that description of E. L. Shumway's make? If so, state generally to what extent?

Ans. Somewhat acquainted with them. I have seen considerable many.

Int. 38. Look at the tree now shown you, marked "Bradish, T. G. Kent, not. pub.," state, if you know, whose make it is, and how it differs from trees of that size of Shumway's make, which you saw previously to '64.

Ans. It is the same description of tree that I've always known as Mr. Shumway's make. It differs in the thickness of centre piece for one thing, and there are no brasses upon the edges of the backs here. That's all the marks that I think of with the exception of the style of foot. He used to make a style of foot different from this that had what treers called "an egg" on the instep.

Int. 39. Did you see any of Shumway's trees prior to '64, of any size, in which the iron of centre-piece casting was visible between the lapping brasses and the wood of the front?

(Objected to as immaterial.)

Ans. I never did.

Int. 40. How long should you judge the tree marked Bradish had been used? and state your reasons.

(Objected to as immaterial.)

Ans. I should not think it had been in use over a month. The bearings are not worn to any extent. The wood part, where it was covered with wet leather, doesn't show a great deal of stain. The bottom of the feet doesn't show but very little wear.

Int. 41. How decided are you as to your own ability and the ability of any practical treer to determine, by examination of a tree, how much it has been used?

Ans. Well, having seen trees in process of wear, from new until entirely worn out, it seems to me that one could tell as well as about any other machine. There's no wear about this tree but what I would give as much for it to-day as for one that had never been used at all.

And in answer to cross-interrogatories propounded to him by F. A Brooks, esq., deponent saith as follows, to wit:

Cross-int. 1. Where have you been at work for the past ten years, and in what business?

Ans. At Milford, Mass.; treeing boots.

Cross-int. 2. In whose employ?

Ans. For the past ten years I've been in the employ of B. D. Godfrey, Underwood, Walker & Co., and Walker, Johnson & Co., where I am at work now.

71 Cross-int. 3. For how long have you been at work in Milford?

Ans. I've always been in Milford, and at work in boots since I was ten years old, except about six months.

Cross-int. 4. What you know of the boot-tree manufacturing business, and the several kind of trees, has been gathered from *from* what you saw or heard at Milford, has it not?

Ans. Not wholly.

Cross-int. 5. Where else?

Ans. In the adjoining towns, and other towns where they manufacture boots. I've taken pains to inquire and inform myself.

Cross-int. 6. When did you first hear of the Upfield and Sampson tree?

Ans. I learned of the Sampson tree during the winter of '55. There was one set up in the shop where I was at work. The Upfield tree I think I first saw in the year '56, in the winter, it might have been the fall of '55. I am not positive as to that date, but that it was about that time. I had heard of the Sampson tree previously. It might have been the fall before it was set up. I don't think it was longer than that, the fall of '54 I mean.

Cross-int. 7. Did not the Sampson tree have a shifting back?

Ans. No, sir.

Cross-int. 8. Do you mean to say that what is called a Sampson tree did not have shifting backs, that is to say, that the front and back of the tree were fastened together by a toggle joint or some other such other contrivance?

Ans. They were fastened together by a contrivance for the purpose; there was no toggle joint. I can't tell you what the contrivance was called, but it had two separate legs to the tree, which were to be changed to adapt to different sized boots. You changed the entire leg. You laid down one leg and picked up another. The back didn't change at all. There were two separate sets of machinery entire, one in each leg.

Cross-int. 9. How many Sampson trees did you see?

Ans. Only that one.

Cross-int. 10. What did you first hear of the Sampson tree before you saw it?

Ans. I heard that he was going to make a tree to overcome
72 some of the objections to the old brass tree, such as being obliged to get small sized boots on to the same leg that we put

the large sized ones on; the brasses were to be arranged so as to be not so much in danger of cutting the leg of the boot.

Cross-int. 11. How was the old difficulty as to the size of boots as compared to the size of the leg to be overcome, if you heard?

Ans. I didn't hear, or if I did, I didn't understand. I think I didn't hear until I saw the tree.

Cross-int. 12. Do you mean to swear that before Sept., 1854, there was, in fact, no such thing as a changeable back tree, or that you only never saw or heard of any at Milford, and in the towns visited?

Ans. Only that I never saw or heard of one.

S. J. ONION.

Deposition of Levy P. Bradish, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 7TH, 1866.

Int. 1. Have you before testified in this case?

Ans. I have.

Int. 2. When did you begin the tree, and where did you work?

Ans. In 1853, at P. G. Wood's shop, in Upton.

Int. 3. What kind of trees were used there, and how many, while you worked there?

Ans. Slide trees, Bliss patent trees, and what was called Lewis and Shumway's patent tree. I couldn't tell how many slide trees; three brass trees, and I think two of the Shumway and Lewis trees.

Int. 4. Are those brass trees known by any other name or names? If so, what?

Ans. They are called "Bliss patent trees" or "patent tree" or "brass tree."

Int. 5. Did R. L. Lewis work for Woods when you were there? If so, when and what trees did he use?

(Objected to as immaterial.)

73 Ans. He did, in 1854 and 1855, at different times; I first saw him at work on a brass tree. Before he left he worked on a tree made by Charles T. Eames. This tree Eames made was one of his own (Lewis's) invention.

Int. 6. How did that tree differ from the brass tree?

(Objected to as immaterial)

Ans. Both in changeable backs and in the method of spreading.

Int. 7. Did E. L. Shumway of Worcester come there to see Lewis? If so, when, did he see him, and what did they talk about, if you know?

(Objected to as immaterial and as asking for hearsay.)

Ans. He came there, saw him; I'm not positive as to the time. I think in the fall of '54, and they talked about this new boot-tree which Mr. Eames had made.

(Conversation objected to.)

Int. 8. Did Woods get a tree with four inclines and cross-heads? If so, when and from whom?

Ans. He did of Lewis & Shumway or Shumway & Lewis; in the winter of 1854 and '55.

Int. 9. Did you work on this tree? If so, was it satisfactory or not?

Ans. I did. It was not altogether satisfactory.

Int. 10. What was the trouble with it?

Ans. Where the brasses lapped over the front and backs it left too much of a mark on the boots after they were finished.

Int. 11. When did you first see a tree with stationary front and movable backs? And where?

(Objected to as immaterial.)

Ans. In January, 1856; at Godfrey, Colburn & Co.'s shop in Milford.

Int. 12. When did trees of that description come into general use?

(Objected as before.)

Ans. In '56 and '57.

Int. 13. How were they regarded as compared with brass trees?

Ans. A decided improvement.

Int. 14. State generally what experience you have had in purchasing and using trees with stationary fronts and movable backs?

Ans. Since February, '56, I have had charge of Mr. Godfrey's treeing and purchasing trees, and not only for him, but for the company of Claflin & Godfrey part of the time. I've had from 10
74 to 33 men and trees at work at the same time; I've had the oversight of building nearly 50 boot-trees.

Int. 15. Look at tree now shown you marked "Youth's G. D. N.," and state whether or not you can tell if it is the same tree you examined with Mr. Howe in Mr. Newton's shop in October last.

(Objected to so far as opinion is inquired for, as witness does not appear to be qualified to give an opinion on the subject as an expert.)

Ans. I should not swear it was or was not.

Int. 16. State how much the tree you then saw had been used as compared with the tree marked "youth's."

(Objected to as above.)

Ans. That tree had been used but little. This has the appearance of having been used for a year.

Int. 17. Had the tree you then saw been used more or less than the tree marked "Bradish, T. G. Kent, notary public?"

(Objected to as above.)

Ans. Less, I should say.

Int. 18. Before you saw the tree Lewis had at Woods' shop, had you ever seen or heard of a changeable back tree of any kind?

(Objected to as immaterial.)

Ans. Never.

Int. 19. State whether that was then a new thing to you and to the other treers in Woods' shop, or not.

Ans. It was, to me and to the others.

Int. 20. Why can you not swear as to the identity of the tree marked "youth's" with the tree you saw in Newton's shop?

(Objected to as asking for matters of opinion and not for substantial relevant facts.)

Ans. Because trees on being used change their appearance so much, it wouldn't be safe.

Int. 21. What trees were generally used up to '55?

Ans. Slide trees and Bliss patent tree.

Int. 22. What other kind of trees were attempted to be introduced?

Ans. One by Mr. Sampson and one by Mr. Upfield.

Int. 23. With what success?

Ans. With no success to my knowledge.

And in answer to cross-interrogatories propounded to him
75 by F. A. Brooks, esq., counsel for respondent, deponent saith as follows, to wit:

Cross-int. 1. When and at whose request did you examine a tree at Mr. Newton's shop?

Ans. Last October, by request of Mr. Howe.

Cross-int. 2. At that time, or at any other before or since, did you examine any other machine tree in Mr. Newton's shop?

Ans. I did not.

Cross-int. 3. How long was the new machine-tree which Lewis used at Woods' shop in 1854, kept in use, or what became of it, if you know?

Ans. It wasn't kept in use long; I don't know what became of it.

Cross-int. 4. Was either that tree or some other of similar style in public use ever since the fall of '54?

Ans. Yes, sir; such trees with four inclines or less.

LEVI P. BRADISH.

Adjourned to Monday, 9th, at 10 a. m.

Deposition of George Ellis, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 9TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. George Ellis; age, 38; residence, Worcester, Mass.; occupation, cutter in a boot shop.

Int. 2. Have you ever been a boot treer? If so, how long?

Ans. I have; for fourteen years, as near as I can recollect.

Int. 3. What trees did you use when you first began treeing?

Ans. The old-fashioned wooden slide trees.

Int. 4. Did you ever tree boots at Hopkinton? If so, when did you go there, and what kind of trees did you use?

Ans. I have done so. I don't recollect the time; I should think somewhere about 13 or 14 years ago I used the brass tree.

76 Int. 5. Where did you get this brass tree, from whom?

Ans. From E. L. Shumway, I think, of Worcester.

Int. 6. Did Shumway say anything then about the brass tree in praise of it? If so, state what?

(Objected to as immaterial, and as hearsay.)

Ans. I can't recollect of his saying anything in particular in praise of it.

Int. 7. Did he say anything about it? If so, what?

(Objected to as above.)

Ans. He wanted I should take a tree and introduce it. I did so. I don't recollect anything further.

Int. 8. Did you see any other kind of machine tree after this? If so, describe the kind you first saw; state when you saw it, and who brought it there?

Ans. The next I saw, after the old iron or brass tree, was a wooden tree. The first wooden tree, I think, I ever saw. The back and front both moved. I saw it in Worcester, in A. G. Walker's shop, Southbridge st. I am pretty certain that Mr. Shumway brought it there.

Int. 9. State whether or not this tree had changeable backs.

Ans. I think it had.

Int. 10. Was this after or before the fire that burnt Merrifield's building?

Ans. After the fire.

Int. 11. Was this tree satisfactory or not?

Ans. It was not.

Int. 12. What kind of machine tree did you see next, if any? How did it resemble or differ from Exhibit "Bradish, T. G. Kent, notary public?"

Ans. The next tree I saw, the front was stationary, the back was movable. I should think it was nearly the same style of tree as this.

Int. 13. Where did you see that tree?

Ans. In Worcester, I don't recollect the place.

Int. 14. Did Shumway and Lewis have a shop at Worcester about the time you saw the tree that moved out back and front? If so, where was it?

77 Ans. Shumway had a shop there, on Washington st.

Int. 15. Do you know whether Lewis was with him then or not?

Ans. I do not.

Int. 16. Before you saw the tree that moved out back and front, had you ever before seen or heard of a changeable back tree?

(Objected to as immaterial.)

Ans. No, sir.

Int. 17. What trees were generally in use before that time?

Ans. The iron and brass tree, and the old slide tree.

Int. 18. What towns have you worked in at treeing boots?

(Objected to as immaterial.)

Ans. Hopkinton, Leicester, and Worcester.

And in answer to cross-interrogatories by F. A. Brooks, esq., deponent saith:

Cross-int. 1. Is your recollection distinct about the brass tree referred to in fourth direct answer?

Ans. I think it is.

Cross-int. 2. You say you got that tree from Mr. Shumway; where?

Ans. I took it from Worcester. I think from Merrifield's building.

Cross-int. 3. Did you first see that tree in Worcester?

Ans. Yes sir.

Cross-int. 4. Do you recollect seeing Mr. Shumway at Hopkinton, and speaking to him about a brass tree before you went to Worcester, as you say?

Ans. I should think not. I saw him in Worcester first.

Cross-int. 5. Whom did you work for in Hopkinton?

Ans. Coburn and Claflin.

Cross-int. 6. Do you recollect that Mr. Shumway went with you to Hopkinton, and introduced you to Coburn and Claflin, and that you saw a brass tree there at that time?

Ans. I recollect he introduced me there, but I saw no brass tree there at that time.

78 Cross-int. 7. Don't you recollect that Mr. Shumway fitted a brass tree for your special benefit, which you took to Coburn and Claflin's?

Ans. I do.

Cross-int. 8. Had not Coburn & Claflin had the same tree there before?

Ans. They had, or reported so.

Cross-int. 9. Was not that same tree taken from Coburn & Claflin's to be fitted for you before you went to work for them?

Ans. It was.

Cross-int. 10. When was it taken from Coburn & Claflin's?

Ans. I don't know precisely. I should say not far from the time that he fitted it over.

Cross-int. 11. Before or after you were introduced to Coburn & Claflin?

Ans. It was before I went there to work that it was taken.

And in answer to direct interrogatories resumed, deponent saith:

Int. 19. Why was it that Shumway introduced you to Coburn & Claflin, and fitted this brass tree over for you? State what arrangement was made between you and Shumway, if any.

(Objected to as not rebutting, and as immaterial.)

Ans. I don't know why. No particular arrangement was made that I know of, but to come and take the tree, and try it and introduce it there.

Int. 20. What trees were in use there when you first went there?

(Objected to as not belonging to re-examination.)

Ans. Old wooden slide trees—the old style.

Int. 21. What success did you have in introducing the brass tree there?

(Objected to as above.)

Ans. Good success.

Int. 22. I understand you to say that they had used a brass tree there before. Do you know how they came to give it up?

(Objected to.)

Ans. Because they didn't know how to use it.

79 Int. 23. You went there, then, to show them how to use it, and thus introduce it?

Ans. I went there and used the tree.

Int. 24. Was Shumway then a manufacturer of these trees?
(Objected to as above.)
Ans. I couldn't say whether he was or not.
Int. 25. Was he reported to be a manufacturer of that kind, or did you understand him to be so?
Ans. He had the management of that business at that time.

And in answer to cross-interrogatory, resumed by F. A. Brooks, esq., deponent saith:

Cross-int. 26. Do you know whether Mr. Shumway was engaged in any other business at that time or not?
Ans. I do not.

GEORGE ELLIS.

Adjourned to 11th, at 10 a. m.; (11th,) adjourned to 12th, at 10½, a. m.

Deposition of Charles T. Eames, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 9, 1866.

Int. 1. State your name, age, residence, and occupation.
Ans. Charles T. Eames; age, 65; residence, Milford, Mass.; occupation, farming, at present.
Int. 2. Have you ever been a manufacturer of boot-trees? If so, when did you begin, and what kind of trees did you manufacture, and for how long?
Ans. I have. I think the first trees I made were in 1824; the wooden slide trees, as they were termed, or hand trees. I manufactured them till 1854, more or less every year. In 1854 I made a tree for R. L. Lewis from a model—a small model—that he brought me to have made into a working tree. I made no more of that kind that year, and in February, 1855, I got up a tree of my own invention, as I considered it, (for I never saw or heard of one like, nor
80 of any who ever did hear of one, at that time.) I then manufactured those trees until 1862, when I sold out to Jarvis Howe.
Int. 3. State what means of knowledge you have as to what trees were in use before 1855. State fully.
Ans. What knowledge I have of it is: I was a manufacturer of boot-trees, and known as such all over the country where boot-trees were used. After Howe's tree was got out in 1848, I used frequently to have people ask me why I didn't get up another sort of tree that would be better.
(Answer, so far as relates to what was said by other people, objected to.)
Int. 4. Now state what trees were in use up to 1855.
Ans. None except the Howe patent brass tree and the slide tree. There was a Sampson got up a tree, but they never were used any of any consequence. I never saw but one set. I guess he didn't make many.

Int. 5. Do you know E. L. Shumway, of Worcester? If so, when did you first know him, and state what his business then was, if you know?

Ans. I do. I knew him first, I think, somewhere about 1849. He was then at work, making machinery for boot-making, and trees some. He was to work for Jarvis Howe & Sessions.

Int. 6. What was his business, if you know, up to 1854?

Ans. He was making the iron or brass tree, called the Howe tree. Some were iron; most of them brass, as the iron colored the boot.

Int. 7. You say you made a tree for R. L. Lewis in 1864. State what time of year it was, and describe the tree you made.

(Objected to as immaterial and irrelevant.)

Ans. It was the summer of 1854, warm weather; June, July, or somewheres along there, I think. It was a what they called a four-incline tree—two cross-heads on each side, back and front both moved out.

Int. How many backs did you make?

Ans. I made two backs.

Int. 9. Before you saw this tree, had you ever before seen or heard of any tree with changeable backs except the old slide trees?

81 Ans. I never had.

Int. 10. Were such trees ever used before that time by any one, so far as you know, and if not, state your means of knowledge, and how positive you are?

Ans. They were not. The means that I have of knowing are that I was making trees for most everybody that used them, and nothing was ever said to me in any shape why I did not make such trees, nor anything about it. I am so positive that I should suppose if there was any such thing going on that I should have had to make some of them. I made for all the folks at Worcester, and never heard of anything of the kind. I was frequently inquired of why I didn't get up a machine tree.

Int. 11. Please look at exhibit now shown you, marked "Bradish, T. G. Kent, notary public," and tell how the tree you invented differed from that in shape and the number of cross-heads.

Ans. There was only one cross-head in the one I made, the lower one. The shape in other respects was the same.

Int. 12. Before you made your tree with changeable backs and stationary front, had you ever seen or heard of any tree with changeable backs and stationary front, or had you ever received any intimation of any kind that any such tree ever existed?

Ans. I never did.

Int. 13. What is your belief as to that, and how positive are you?

(Objected to.)

Ans. My belief is that if there was anything of the kind made I should have known it; I was the only boot-tree maker in that section of the country, where a great many are used. I mean the only one that manufactured slide trees. I know the Howe tree was made in Worcester, and there was a man who made a few slide trees, but nothing to speak of. On reflection, there was another manufacturer of slide trees in Hopkinton for a short time, named Putnam.

Int. 14. Were you defendant in the cases of Godfrey and Eames on the Howe patent, and Godfrey and Eames on the Lewis patent? If so, who was your counsel?

Ans. I was. Mr. F. A. Brooks was my counsel.

Int. 15. In the trial of the first of these cases, was Mr. Shumway a witness for you?

82 Ans. He was.

Int. 16. Were you then on good terms with him, and are you now?

Ans. I was and am.

Int. 17. Was he also ready to testify in your favor in the Lewis case?

Ans. I don't know anything but what he was; he came down very willingly. I don't think, on reflection, he was here in the Lewis case. It was the Howe extension case I was thinking of.

Int. 18. Did Shumway have talk with you and Mr. Brooks before he testified in your favor as to his knowledge of and connection with the boot-tree business?

(Objected to as irrelevant and incompetent.)

Ans. I don't recollect whether he had with Mr. Brooks or not; he had with me. I went to see him on purpose when I went up after him as a witness.

Int. 19. Before 1864 did Shumway ever say to you that he was the inventor of trees like Exhibit "Bradish, T. G. Kent, notary public," or did he ever intimate, in any way whatever, anything to that effect; or that he had ever seen or heard of a changeable back tree before he saw Lewis's?

Ans. I've no recollection of it whatever.

Int. 20. Did he ever after that time? If so, when, and what did he say?

Ans. It was after I leased my patent to Mr. Howe. I was in Shumway's shop in Worcester, and he was at work on boot-trees like "Bradish" exhibit. He then said that he made a tree, (two of them I think he said,) and one he said he sold to a man in Grafton, I think, and the other in Southboro' or Westboro'. I don't think he told me the names of the men, but one, I think he said, was a deputy sheriff.

Int. 21. How came he to say this? What were you talking about?

Ans. I was saying something about Mr. Howe's buying out, and having the whole right; he had been to work for Mr. Howe previous, I think. He had worked on a license or some way, and Mr. Howe had shut off, and Shumway was working on his own account.

83 I was saying that Howe had the entire right, and Shumway said that he (Shumway) had made trees previous to Lewis's getting them up; that's what he said, and he told where they were sold, as I have previously said.

Int. 22. Did you oppose the extension of the Howe patent? If so, was Mr. Shumway a witness in your favor?

Ans. I believe he was.

Int. 23. Did you believe Shumway when he told you he had made these two trees before Lewis got up his invention, or not?

(Objected to.)

Ans. Well, I couldn't say that I really thought it could be so, because I had tried every way to find out, and as long as I was working for Grafton people, I should have thought I should have heard of it.

Int. 24. Did you believe him or not?

(Objected to.)

Ans. Well, I couldn't say that I could believe it.

Int. 25. Do you now believe that Shumway then told the truth?

(Objected to.)

Ans. Just as much now as I did then.

Int. 26. Is Mr. Shumway now present?

Ans. I guess he is. He is here.

And in answer to cross-interrogatories propounded to him by F. A. Brooks, esq., counsel for defendant, as follows, to wit:

Cross-int. 1. Did you obtain a patent 27th May, 1856, for a boot-tree like that subsequently patented to R. L. Lewis in 1858, excepting that your's had one cross-head and incline, while Lewis's had two?

Ans. I did.

Cross-int. 2. As such patentee, did you ever call upon Mr. Shumway to pay you for trees manufactured by him, or to desist from making such trees?

Ans. I went into his shop, when he worked in Worcester, for such purpose.

Cross-int. 3. Did not Mr. Shumway at that time claim that he had himself made such trees before your invention was made?

Ans. I think he did not.

84 Cross-int. 4. Did he not deny your right?

Ans. I've no recollection of it at all. I forbid him making them before witness; had very little conversation with him about it.

Cross-int. 5. Did he regard your prohibition, and what, if anything, did he say on the subject? Do you now recollect?

Ans. He did not say anything of any consequence as to my notifying him—made no answer in particular. They were at that time making both kinds of trees. He didn't stop making. I couldn't recollect everything that was said, of course. There was something said about his altering from the 4-incline planes to the 2-incline planes.

Cross-int. 6. Was there not something said in that conversation to the effect that trees similar to yours had been made by him (Shumway) prior to the date of your invention?

Ans. I've no recollection of it—of anything's being made prior to it. What we talked about was the tree they had formerly been making with 4 inclined planes, and he says that after I got my tree out Godfrey came up to them and wanted to have them alter and make them with two inclined planes, so as not to have the brass lap over in front and to leave two marks upon the leather.

Cross-int. 7. Were you in Shumway's shop when he was in company with Lewis in Worcester?

Ans. I was.

Cross-int. 8. That was before the date of your invention, was it?

Ans. It was after I got my machine up—some time in the summer of '55.

Cross-int. 9. Were you not present at Worcester in the winter of '64,–'5, as witness in a suit of Godfrey *v*. Shumway, and did you not then learn from Shumway that he claimed to have invented boot-trees with shifting backs prior to the time of Lewis's invention?

Ans. I don't recollect that I heard any such conversation at that time at Worcester. I was there at the time.

Cross-int. 10. Excepting your boot-tree patent of '56, and until you granted a license under the same to Mr. Howe, the complainant, what patent titles were set up or claimed to cover machine boot-trees in use? Was not the Howe patent of '48 the principal or only one? (Objected to as being matter of record.)

85 Ans. The Howe patent was the principal one. There was the Upfield patent, which was set up as evidence in my case against me.

Cross-int. 11. Did Mr. Godfrey bring a suit against you for alleged infringement of the Howe patent of 1848, in consequence of boot-trees made by you under your patent?

Ans. He did.

Cross-int. 12. Did he solicit you to take a license under that patent?

(Objected to.)

Ans. I don't know as he ever did. He claimed that I was infringing, and tried to get me to pay him for making trees under that patent.

Cross-int. 13. Did he fail in the suit brought against you upon the Howe patent?

(Objected to as matter of record.)

Ans. He did, finally, in the U. S. court.

Cross-int. 14. After such failure, did Mr. Howe, the complainant, procure the control of your patent?

Ans. He did procure it, but I think before and not after the time referred to.

Cross-int. 15. You refer to the Sampson boot-tree, so called; was not that a boot-tree with shifting backs?

Ans. It was not. I shouldn't call it so. You had to use two legs.

Cross-int. 16. Did you not oppose the grant of the patent to R. L. Lewis before the Patent Office, on the ground that he was not the original and first inventor of the boot-tree claimed by him—I mean the patent here in suit?

Ans. I believe I did.

Cross-int. 17. Did you not put in the affidavits of yourself and others to prove that Lewis was not such first inventor?

(Objected to, unless counsel for the respondent will agree to produce certified copies of such affidavits to be used at the hearing, and produces the same. Counsel for respondent agrees to produce the same, and asks if he will allow the same to be read in evidence if produced. Counsel for complainant desires the witness to proceed.)

Ans. I recollect that such affidavits were put in, but can't recollect the time.

86 Cross-int. 18. Did you not, so long as you continued sole owner of your patent, regard Mr. Lewis's patent as invalid?

Ans. So far as they changed their backs I did. That was my own opinion—others may have had different opinions.

Cross-int. 19. Is not that still your opinion?

Ans. I haven't thought enough about it since I got rid of it to make up my mind.

And in answer to direct interrogatories, resumed by J. E. Maynadier, esq., deponent saith:

Int. 27. Why is it that you regarded the Lewis patent invalid, so far as changing backs was concerned?

Ans. All I thought of was this—when I made his patent tree there was no extra back to the model he brought, but I put the extra back to the tree myself.

Int. 28. Please read your 16th cross-answer and state whom you did believe to be the first inventor of the boot-tree made by him.

Ans. I believed that I was the first inventor.

Int. 20. You have spoken of forbidding Shumway to make trees. At this time was he or not in partnership with R. L. Lewis?

Ans. I so understood it.

Int. 30. Was Lewis in the shop then?

Ans. He was.

And in answer to cross-interrogatories resumed by F. A. Brooks, esq., deponent saith as follows:

Cross-int. 20. Was the idea of making more than one back, in connection with the model brought you by Mr. Lewis, original with you, or suggested to you by Mr. Lewis?

Ans. It was original with me, as I considered it, because when I had got the tree made, and wanted something for a smaller boot, I made another back, the same as I had done with wooden trees.

Cross-int. 21. Was the model as brought you by Mr. Lewis with a single back capable of spreading to fit larger boots of any

87 size ordinarily made? That is, would a boot-tree made conformable to the model be able to fill the largest size boots without change of back?

Ans. I am not sure which sized back I made first.

Cross-int. 25. Did you have any further conversation with Lewis as to the employment of a second back?

Ans. I don't know that I did, nor do I know that I did not.

And in answer to direct interrogatory by J. E. Maynadier, esq., he saith:

Int. 31. Did not the model which Lewis brought you have the inclined planes in the back so arranged that the back could be readily taken off and put on?

Ans. Yes, sir; it did.

CHARLES T. EAMES.

Deposition of George W. Bliss, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 12, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. George W. Bliss; age, 46; residence, Binghamton, N. Y.; I am not in any particular business at present; was formerly a boot manufacturer, and am now manufacturing, but not boots; having taken a contract for a short time; have now no permanent business.

Int. 2. When did you first see a machine tree? Where was it? and describe it fully.

Ans. In Worcester, at my uncle Cyrus Bliss's shop in '47; I am very sure. It's so long since that I couldn't tell absolutely, but am very certain that it was in '47. It was what is called an iron machine tree; it had a back hung in the middle by means of a toggle joint and pin. The front part was all cast together. The back was made of composition (brass and something else; what, I don't know.) It then had a brass flange riveted on to the back that shut
88 over on to the front. It had a cast-iron foot made hollow, (what I call a "shell foot,") so arranged that after the foot was put into the boot, the boot could be slipped on to the leg of the tree and the foot held there. The tree then had a journal turned on one end—the opposite end to where the foot went on. Then there was a cast-iron register made to fasten on to a table on to which this journal was slipped. Then there was a rod that extended down inside of this journal into the leg of the tree, and took hold of the toggle joint in the tree. It was then attached to a swivel joint, which was attached to a lever that extended down under the table. To that lever was attached a rod that went down and was attached to another lever that was attached to a standard on the back side of the table that extended down to the floor. Nearly to the end of the last lever was a piece of iron fastened, which worked as a sort of a catch on a ratchet, fastened on the standard at the front side of the table. To the lower lever there was a coiled spring attached that drew that lever up when it was unhitched. On this rod that run through the journal and centre of the leg and took hold of the toggle, there was a coiled spring slipped on, over the rod, used for the purpose of drawing the back and front together, when they wanted to take the boot off.

Int. 3. Why is it that you recollect this tree so distinctly?

Ans. Because it was one of the first attempts to introduce machinery into the boot-treeing business that I knew anything about, or that the hands knew anything about.

Int. 4. What was your business then, and for whom did you work?

Ans. My business was cutting sole leather for my uncle Cyrus in his shop. I also had the charge of the shop when he was away.

Int. 5. Did you know E. L. Shumway then? If so, how long had you known him, and where was he there at work?

Ans. I became acquainted with him about that time; can't say whether a few months before or after. He boarded at the same house

that I did, and was employed at the Court Mills where they made agricultural implements.

Int. 6. Did you ever hire a room in Merrifield's building? If so, when, and what room did you hire?

Ans. I did; the rooms were in Union steet, in the third and fourth stories; all of the fourth, and half of the third story. I think
89 the lease was dated January 1, 1852. We commencnd fitting up the shop a little before.

Int. 7. Who occupied these rooms, and for what purpose?

Ans. I occupied about three-quarters of them for manufacturing boots, and my uncle, Wm. R. Bliss, occupied the rest of them for manufacturing iron boot-trees and sewing machines. After a while Mr. Shumway made some arrangement with my uncle to manufacture boot-trees, and I let him (Shumway) a room which I had partitioned off for him.

Int. 8. Do you know Messrs. C. K. & H. E. Dorman. If so, where did they work at this time, and doing what?

Ans. I knew them; they were employed by my uncle in the manufacture of boot-trees and sewing machines. Sometimes one, and sometimes both of them.

Int. 9. How long did Shumway continue to be engaged in the manufacture of boot-trees in Merrifield's building, and state, if you know, how he came to stop?

Ans. I don't know how long he was so engaged. The reason of his stopping was that he and my uncle could not agree as to the royalty to be paid my uncle for each boot-tree manufactured.

(Reasons objected to, it not appearing that the witness has any knowledge.)

Int. 10. State how you know the reason of Shumway's stopping.

Ans. My uncle wanted (anything which Bliss said objected to) me to take the business, and told me that he and Shumway couldn't agree as to the amount of royalty to be paid. Before I agreed to take it I asked Mr. Shumway (any conversation between him and Shumway objected to) what the reason was he didn't continue the manufacture of boot-trees, and he said he could not afford to pay William as much as he demanded on trees. This was the gist of the matter.

Int. 11. Tell us, as near as you can, when it was that Shumway stopped.

Ans. In the spring or early summer of '54—spring, I think.

Int. 12. Did Shumway occupy any other rooms in Merrifield's building up to this time, to your knowledge?

Ans. Not that I know of.

90 Int. 13. What means of knowledge have you, and state how positive you are that he did not?

Ans. I saw him almost every day, every day that he was in town (he was out of town some,) and the other rooms in the building were occupied by other parties. I am very sure that he did not occupy any other part of the building. He could not have done it without my hearing of it some how.

Int. 14. What trees were manufactured in that building up to the time it was burnt?

Ans. They were generally known by the name of "the patent boot-tree," or the "iron boot-tree."

Int. 15. What patent did your uncle then own?

Ans. Jarvis Howe's patent.

Int. 16. How did the trees you call "patent" or "iron trees" differ from the one you have fully described above?

Ans. No difference, except in minor things, the style of the tree, and that they used wooden feet instead of iron ones.

Int. 17. Do you know whether any other trees were manufactured in that building at the time it was burned. If so, state fully your means of knowledge, and how positive you are.

Ans. I don't know that any other trees were manufactured in that building up to the time it was burned. I am very sure that there was not. I think all of the other parts of the building were occupied in other business, and I don't think that any one could have manufactured boot-trees there without my knowledge.

Int. 18. State fully what means of knowledge you have as to what trees were manufactured in the rooms occupied by your uncle and Mr. Shumway.

Ans. My uncle and I lived in the same house, and were connected in business together, and were very intimate as to what each other was doing. I was in my uncle's rooms almost every day, and in Shumway's room. My business called me to pass through them.

Int. 19. On what terms were you then with Shumway, and where did he live?

(Objected to as immaterial.)

Ans. On social and friendly terms with him. He boarded with my uncle, and my uncle and I occupied a house that we owned together, each having a deed of one half the house.

91 Int. 20. Up to the time Shumway left the business did he, to your knowledge, ever manufacture a tree with changeable backs, or did he ever tell you that he had done so, or in any way intimate anything to that effect?

(Objected to as above.)

Ans. He never had manufactured any other machine boot-tree to my knowledge; he never told me that he had, or intimated anything to that effect.

Int. 21. When did you first hear of a machine tree with changeable backs, and describe the tree which you heard of?

(Objected to as above.)

Ans. I think when I first heard of it was in the summer of '54, after Merrifield's building was burned. What I heard was this—that it had two or more backs that could be changed, and also a movabl front; that a man by the name of Lewis was inventing it at Milford that the labor was being done in Mr. Eames's shop, and I heard con siderable that Eames had said about it, that it would supersede othe trees, etc.

Int. 22. You say you manufactured boots in Merrifield's building How long did you continue that manufacture there, and what tree did you use?

Ans. I continued after the buildings were rebuilt until about December, 1855. I used the patent boot-trees, Howe's patent, exclusively until the fall of '55. I think it was when I bought one of these Lewis's trees, so called, of Mr. Shumway, or caused one to be so bought of him.

Int. 23. After Shumway left the business of manufacturing the patent trees who carried it on?

Ans. I did until I was burnt out, and some few months after. Then my uncle Alonzo took the patent, and shortly after sold it to Godfrey.

Int. 24. Where was your shop after you was burnt out?

Ans. My shop for manufacturing the boot-trees was in Manchester street, a short distance from Union street.

Int. 25. Who did the work there for you?

Ans. Mr. Dorman did the iron work, which one I can't say; and my uncle Alonzo and Mr. Sampson between them did the wood work, a part, and made the tables.

92 Int. 26. What other machine trees were attempted to be introduced to your knowledge up to the time you ceased manufacturing the Howe tree?

Ans. A short time before I ceased making the Howe tree, I heard of a man named Sampson who was attempting to fit up a machine tree with changeable backs, and I went and saw him and employed him to come to work for me, and bring out his tree, if he could. I know of no other kind except the Lewis tree which I have spoken of.

Int. 27. Describe, if you please, the Sampson tree, and state generally the extent of your efforts to introduce it, and what success you had.

Ans. It was manufactured of all wood. It had duplicate or changeable backs, which had a brass flange screwed on to the sides of them, which lapped over on to the front, as I think. I furnished him with the means to bring out his tree; spent some two or three hundred dollars in trying experiments, and satisfied myself that they were not practical, and he left my employ. These trees were distended by means of a folding lever, or, I think, two levers, one bearing against the other, and when distended the trees would not collapse without using the hand. The tree with two backs was made as an experiment, with a view to make a changeable back tree out of the Sampson tree. The trees that I sold had two entire legs, one smaller than the other.

Int. 28. When was it that you endeavored to make a Sampson tree with duplicate backs, and what were your reasons?

Ans. It was in the latter part or summer of '54, after I had got my shop started again after being burnt out. My object in doing it was to get up something that should compete with the Lewis tree.

Int. 29. Have you ever used trees with changeable backs in the manufacture of boots? If so, when and where?

Ans. I have used the Lewis tree with changeable backs in Worcester a very little, in Milford a good deal, in the years from '55 to '60.

Int. 30. You say you caused a tree to be bought of E. L. Shumway. Please describe this tree, and state whether it was satisfactory or not.

93 Ans. I caused a tree to be bought of E. L. Shumway, or of Shumway & Lewis, I don't remember now whether they were together or not. It was a tree with changeable backs and a movable front. The brass for covering the space when the tree was distended was secured on to the centre piece, and lapped both ways towards the front and back. I used it a while, but it always worked rather hard, owing to not being properly manufactured.

Int. 31. After you ceased manufacturing the Howe tree were any more made? If so, to what extent, and by whom?

(Objected to as immaterial.)

Ans. I believe my uncle always made a few, and but a few trees, before he sold the patent to Mr. Godfrey. Since that time there have been none manufactured to my knowledge.

Int. 32. Before you heard of the Lewis tree, had you ever seen or heard of any machine tree with changeable backs?

Ans. No, sir; I had not.

Int. 33. Did you ever hear any complaints as to the want of a duplicate back in the Howe tree?

Ans. Oh yes, a great deal, and many persons refused to buy the iron tree, and always used the old style of tree because they wanted a duplicate back.

And in answer to cross-interrogatories propounded to him by F. A. Brooks, esq., deponent saith as follows, to wit:

Cross-int. 1. When did you first hear of the Sampson tree?

(Objected to.)

Ans. In '54; very soon after I was burnt out, and before I got my new shop.

Cross-int. 3. When did Sampson first go to work for you?

(Objected to.)

Ans. A very few weeks after I got my shop started. In summer or early fall of 1854.

Cross-int. 3. And at that time he had produced his boot-tree designed to obviate the objections you have spoken of to the Howe tree, had he?

(Objected to.)

94 Ans. That was what he claimed he could do, and that he would take out a patent for his improvements.

Cross-int. 4. How long after his coming to work for you did he make a tree, such as he claimed to make?

(Objected to.)

Ans. I should think about six weeks after. Some time in the fall of '54.

Cross-int. 5. Do you know whether Sampson ever applied for a patent. If so, when?

(Objected to.)

Ans. He did. I furnished him with the money for the purpose.

It was in the latter part of the summer or early fall of '54, as near as I can recollect. He made his model the first thing as I recollect. He said he sent it to the office; I didn't see him box it up.

Cross-int. 6. Have you and Mr. Shumway been on good terms with each other of late years?

Ans. We have not.

Adjourned to 2 p. m.

Direct resumed:

Cross-int. 7. Why did Mr. Godfrey purchase the Howe patent? (Objected to.)

Ans. I understood at the time that he did it to save litigation with my uncle, Alonzo Bliss, between the Lewis patent and the Howe patent, my uncle claiming that the Lewis tree was an infringement upon the Howe patent.

Cross-int. 8. Was it not generally understood and claimed among boot-treers at that time that the Lewis tree infringed the Howe patent?

(Objected to, on the ground that it was impossible that any such claim could be general.)

Ans. So far as my knowledge goes, among boot-treers, there was a difference of opinion at that time; some thought it was, and some thought it was not an infringement.

Cross-int. 9. (De bene esse.) Did Mr. Shumway tell your uncle why he could not afford to pay as much as was demanded on a tree?

Ans. He said: "I could not afford to do it; there is not profits enough in the business."

Cross-int. 10. (De bene.) Do you know whether Mr. Shumway gave any other reason for stopping the manufacture of iron trees with W. R. Bliss?

95 Ans. I do not.

And in answer to direct interrogatories, resumed by J. E. Maynadier, esq., deponent saith as follows:

Int. 34. State generally the cause of your trouble with Shumway? (Objected to as immaterial, and because it don't appear that witness had any trouble with Shumway.)

Ans. I always supposed that the reason he manifested the feeling he does towards me was because I had taken the business of manufacturing trees from my uncle. I had no feeling, nor ever had any hard words with Mr. Shumway in my life. I did not know that he had hard feelings towards me until he told a person that he didn't want me to call at his house, and if I did he would turn me out of the house, since which I have never called there.

Int. 35. Is he a connection of yours; if so, what?

Ans. He married my sister.

And in answer to cross-interrogatories, resumed by F. A. Brooks, esq., deponeth saith:

Cross-int. 11. What have been your feelings towards Shumway since?

Ans. Since he told me not to come into his house I have felt a contempt for him and disgust, because I think he did it without just cause. This feeling was purely in a social point of view, not that I would step an inch out of my way to injure him in a pecuniary view, or any one else.

GEORGE W. BLISS.

Deposition of William Seaver, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPTEMBER 5TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. William Seaver; age, 60; residence, Ashland, Mass.; occupation, boot manufacturer.

96 Int. 2. How long have you been a boot manufacturer?

Ans. I commenced in '36, and have manufactured until the present, except three or four years during the time.

Int. 3. In what town?

Ans. I commenced in Hopkinton, and moved to what is now the town of Ashland, then part of Hopkinton, three or four years after.

Int. 4. What kinds of boot-trees have you used during that time?

Ans. When I first commenced I used the old slide trees; I think the next was the iron foot, but whether with iron leg and back I am not sure; I think it was. It was one of the first of the patent trees that came out. I used that for some two or three years or more, and I think the next change was a brass foot with a wooden leg, or a brass leg with a wooden foot; I rather think the latter. The next, I think, was the same that I use now, with two or three backs, two certain, a changeable back-tree.

Int. 5. When did you get your last tree having a brass leg and wooden foot, and from whom?

Ans. From Mr. Shumway, either in '53 or '54; I should think '54. I bought it as agent for George Lewis, but whether in his name or not I can't say. I used it in my shop.

Int. 6. When did you stop manufacturing?

Ans. I think in '55; '55 or '56; can't say positively which.

Int. 7. At that time what trees were used in Ashland?

Ans. I couldn't tell; only that they were a patent tree.

Int. 8. Were they like the tree you bought from Shumway?

Ans. I don't know anything to the contrary; I couldn't say positively that they were.

Int. 9. At the time you stopped manufacturing in '55 or '56, were any of those changeable back-trees in use in Ashford, so far as you know?

Ans. I should say not.

Int. 10. At that time had you ever heard of any tree with changeable backs?

Ans. I don't know that I had.

97 Int. 11. When a new kind of tree was introduced in your

neighborhood, what are the probabilities as to your finding it out?

(Objected to.)

Ans. I think I should have been likely to have known it, as I was about among the shops.

Int. 12. How near was Charles H. Tilton's shop to yours in 1855?

Ans. Just about a quarter of a mile.

And in answer to cross-examination by F. A. Brooks, esq., deponent saith:

Cross-int. 1. Were you intimately acquainted with Mr. Tilton at that time?

Ans. Yes, sir; I think I worked in his shop at that time; I blocked the first dozen of boots in the shop where he is now; I mean the big shop. Before that I worked a few months for him in his old shop, and was at work for him at the time he named.

Cross-int. 2. Do you know what kind of trees Mr. Tilton had at that time?

Ans. I know he had the patent tree, but what particular kind I shouldn't be able to say.

Cross-int. 3. Do you mean to say that Mr. Tilton had nothing but a particular mounted tree in use at that time?

Ans. I mean to say that that is my impression; I don't think he had anything else; he had three of them; I should think, all alike or nearly alike, the same thing.

Cross-int. 4. Did you ever have any conversation with Mr. Tilton in relation to his mounted trees?

Ans. I don't recollect as I ever did in regard to any of his trees.

And in answer to direct interrogatories resumed, deponent saith:

Int. 13. Had you ever seen any trees substantially like the trees Tilton had at that time, before you saw his?

Ans. I think those that I used were the same or very nearly.

WILLIAM SEAVER.

98 Deposition of Warren M'Farland, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 6TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Warren M'Farland; age, 56; residence, Worcester, Mass.; am a malleable iron manufacturer.

Int. 2. Please examine your books, and state what castings, if any, you have made prior to the year '55 for R. L. Lewis or E. L. Shumway.

Ans. This book is my order book. The first order I find of those inquired of is R. L. Lewis, of Upton, dated Sept. 8th, 1854, for

" 1 piece	castings	No. 1
1 "	"	" 2
1 "	"	" 3

1 piece castings No. 4
1 " " " 5
6 " " " 6
3 " " " 7 for one machine,

and orders 50 sets complete to be cast and annealed soon as may be."

The next I find under date of December 15th, 1854, to E. L. Shumway, Worcester, Mass., as follows:

"6 pieces from long pattern for boot machine.
6 " next long pattern.
18 " from another small pattern.
36 " with a case set in it."

The next is dated December 19th, for Mr. Shumway, as follows:

"6 pieces, each three patterns."

These seem to be all that I find.

Int. 3. Since that time have you made any such castings; if so, state generally, to what extent, and for whom?

Ans. I have for Mr. Shumway, more or less, ever since. Not to any very great amount. I have made similar ones for Mr. Eames, of Milford, Littlefield and Co., and Jarvis Howe, and R. L. Lewis, I think some.

99 Int. 4. Have you made any castings for Mr. Shumway since the spring of '64?

Ans. Yes, sir.

Int. 5. Do you make castings like patterns "Lewis No. 2," and "Lewis No. 4?" If not, please point out what castings you do make.

Ans. I do not. I make them like that (pointing to the cross-heads in a boot-tree), and that, another (pointing to the incline.)

Counsel for respondent declines to cross-examine.

WARREN M'FARLAND.

Deposition of Jarvis Howe, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 7TH, 1866.

Int. 1. Have you testified in this case before, and are you the complainant in the same?

Ans. I have testified, and am the complainant.

Int. 2. When did you first know Mr. E. L. Shumway?

Ans. In the fall of '47, about the time he commenced work for me and Mr. Sessions, if I recollect aright.

Int. 3. What was Mr. Shumway's business then, and what was he employed to do for you and Mr. Sessions?

Ans. He was employed to work on patterns, and I presume other wood work if we needed. Patterns was the principal work for boot-tree castings.

Int. 4. Please state what you know of Mr. Shumway's connection with the manufacture of boot-trees from that time up to '54.

Ans. After I went out he continued with Mr. Sessions, as I understood. He worked for us while I remained there, and he continued to manufacture trees for Mr. Sessions or Mr. Wm. R. Bliss, after that.

Int. 5. What was your business after dissolving with Sessions?

Ans. When I first went out I had no particular business for some little time. In the fall of '48 I commenced bottoming boots. Then I went to cutting leather, and continued in that business most
100 of the time down to '63. Since February, '63, I've manufactured boot-trees.

Int. 6. Did you ever tree boots? If so, when and to what extent? State generally.

Ans. I have. I never treed any length of time; I treed by odd spells to accommodate; the first when I was not more than 14 or 15 years old.

Int. 7. When you invented your tree, what trees were in use?

Ans. Common wood, wedge, hand or slide trees; that was the only kind that I heard of in use in any section.

Int. 8. How many of your trees, according to your best judgment, have been made from first to last? I mean not to include the changeable back trees now in use.

Ans. I've no real means of knowing. Five hundred or upwards.

Int. 9. By whom were these trees made after you ceased making them?

Ans. By Wm. R. Bliss & Shumway. George W. Bliss I think, made some; I don't know of any others.

Int. 10. When and where did you first hear of the changeable back tree?

Ans. It was in '55, when I lived in Stafford, Conn.

Int. 11. From whom, and under what circumstances?

Ans. Hagar & Duncan called at my place. They were then or had been boot-treers in North Brookfield. They took supper with me; I learned from them that Shumway was getting out, or had got, a new tree that was better than the brass tree, and they said that the tree was invented by Lewis; that it had two backs, changeable backs.

Int. 12. Under what names were your trees known among treers?

Ans. I've heard treers call them "brass trees," "iron trees," "Bliss trees," "Howe trees," "Shumway trees," and sometimes "patent trees."

Int. 13. Did you ever tree boots on your trees? If so, to what extent? State generally.

Ans. Never a great deal; I may have treed a few cases at a time. I never made treeing boots my regular business; I just stepped in sometimes to accommodate.

101 Int. 14. Where were you to work in the fall of '53, and for whom?

Ans. At North Brookfield, for Edmund Smith.

Int. 15. What kind of trees were then in use in North Brookfield, so far as you know?

Ans. The brass trees; there might have been some slide trees used also.

Int. 16. When and where did you first see the changeable back trees in use?

Ans. I think in Brookfield, at Kimball & Robinson's shop; it was in the fall of '56.

Int. 17. How did these trees compare with the tree now shown you marked "Leland, N. A. P.?"

Ans. They were of the same construction.

Int. 18. State the circumstances under which you re-engaged in the manufacture of boot-trees in February, '63.

Ans. After my patent was extended in '62, in connection with Mr. Godfrey, it was agreed that I should take full charge of the boot-tree business or patents; have the general management. After making some attempts to get parties to go on and manufacture and pay a license, not making any satisfactory arrangement, I concluded to take the whole business of manufacturing myself.

Int. 19. Had you any connection with Mr. E. L. Shumway about the time you began to manufacture? If so, state fully what it was from the beginning.

Ans. About the time I commenced manufacturing, I made an arrangement with Mr. Shumway to buy him out. That arrangement wasn't fully consummated until about the 1st of April, '63. I bought all his stock, tools, patterns, &c., all the mechanical parts that pertained to the boot-tree business. He was to work for me for wages, at so much per day.

Int. 20. At the time you bought out Mr. Shumway, what part of the boot-tree business was he engaged in?

Ans. In repairing boot-trees.

Int. 21. Did you have any talk with him at that time as to what his business was? If so, what did he say it was?

(Objected to.)

Ans. I don't know as there was any talk only as to boot-trees. He said he would like to make new trees; he said his business
102 was buying and selling second-hand boot-trees and repairing them; that he supposed he couldn't make new trees then without infringing. That was the idea.

Int. 22. Have you the bill of sale which Mr. Shumway gave you? If so, please present it, and annex it to this deposition.

Ans. I have; I produce it. It is marked "Exhibit Howe, No. 2, N. A. P."

Int. 23. There is one item in this bill of "all of the patterns for the boot-trees." What patterns did you purchase in fact from Mr. Shumway?

Ans. A part of them are shown here; centre-piece castings for leg marked "Lewis, Nos. 1, 2, 3, and 4." There was a register and elbow lever, cross-heads and inclines, and various other little patterns that belong to boot-trees.

Int. 24. What patterns did you use for your centre-pieces at Worcester, while Shumway was employed by you?

Ans. Lewis No. "3" for men's trees; No. "2" for boys'; No. "4" for youths.

Int. 25. What was Lewis No. 1 for? Why didn't you use that?

Ans. It was an old pattern not so good as the other new pattern, No. "3," so it wasn't used except it may have been used in some case of repair, but not to make any new work.

Int. 26. How long was Shumway employed by you?

Ans. I think about eleven months.

Int. 27. Did you get all the patterns you bought of Shumway? If not, what was the reason?

Ans. I did not. He refused to give them up on the ground that he said they were the patterns for leg-stretchers, and not for boot-trees, but they were the same patterns that I had had castings made from for boot-trees during that year.

Int. 2. What were the patterns you did not get?

Ans. Cross-head patterns and inclined planes, one for each different size of cross-head pattern, and there may have been more than one pattern for each size of the inclined planes.

Int. 29. What did Shumway do after he left your employ, and when did he leave it?

Ans. He left my employ, I think, in March, '64. He con-
103 tinued in the same room for the purpose, as he said at the time, of manufacturing leg-stretchers and repairing boot-trees.

Int. 30. Did you have any conversation with him at this time as to infringing? If so, state as fully as you recollect what passed between you.

Ans. I think I did. He said he would not make any new or do anything which wasn't legal for him to do in the way of manufacture or in the way of repairing. I told him we might perhaps differ as to what was legal for him to do, and what was not legal; if there was any difference, something was said about leaving it out, and having it settled without law.

Int. 31. Are you familiar with the castings from the pattern "Lewis No. 2" and "Lewis No. 4?" If so, state how.

Ans. I am, by having castings for trees made from them, and I've ordered patterns made from those castings myself, and I believe I have taken them from the furnace in one or two instances.

Int. 32. What difference do you find between the pattern "Lewis No. 2," and the casting of the tree marked "Leland, N. A. P.?" State fully every difference you observe.

Ans. I don't observe any difference, except on each side of the centre-piece near the journal end, a little addition to the pattern of a piece ¼ inch in width and about ⅜ long and 1-16, about, thick; had a little trimming of the patterns at the foot and for the purpose of adjusting the back a little different, and the ears may have been enlarged a trifle, but I should say they were in the same place, or else the ears in the casting have been filed down.

Int. 33. Now compare pattern "Lewis No. 4" with the casting marked "Howe, N. A. P.," and state fully every difference you observe.

Ans. I don't observe any difference except that one is a casting and the other is a pattern. The casting of that tree was taken from the pattern as it is now, or another just like it.

Int. 34. So far as you know, had Shumway any patterns for boot-trees (except those which he refused to give up to you) when he

left your employ in '64? and state what means of knowledge you have.

(Objected to.)

Ans. He had no other patterns to my knowledge, and I
104 think he has stated to me that he never had; that those he sold to me were all that he ever had. I never saw any trees of his manufacture, of this style, before '64, except what were made from those patterns which lay upon this table, the centre-piece patterns I mean.

(Answer objected to.)

Int. 35. In selling out to you did he agree to sell you all his boot-tree patterns of every kind and description?

(Objected to.)

Ans. He did, and they were so included in the bill; that is, it was understood so.

(Answer objected to.)

Int. 36. Look at the centre casting of the tree marked "Bradish, T. G. Kent," and state whether that could have been made from any of the patterns which you bought from Shumway, and when you first saw a tree of Shumway's made of that pattern.

Ans. It could not. I think the first that I saw of a casting of that kind of his make, I saw in Claflin & Coburn's shop, at Hopkinton, early in the summer of '64; but I think that was put in as a repair job, not a new tree. The next I saw in Mr. Shumway's shop, which was in process of being manufactured into a tree.

Int. 37. When you found these trees of Shumway's new pattern, did you go to see him about it? If so, what passed between you?

Ans. I went to his shop for the purpose of seeing him about his making and repairing trees, which I thought he ought not to do, and to see if we couldn't come to some right understanding with regard to it. We commenced talking about matters pertaining to the true business, etc., but before the subject could be reached as to what I went for, the conversation becoming rather unpleasant, I withdrew from the shop without accomplishing my object.

Int. 38. Don't you recollect a talk you had with him about his infringing, in which he claimed to be engaged only in repairing, about this time? If so, state what it was.

Ans. I think I did have such conversation with him. He said he had not made any new trees, only repaired. Something was said about the patents, about the Lewis patent, and my owning it, and the Eames patent. He said he didn't believe them to be good or valid, or something to that effect.

Int. 39. When did you first learn that Mr. Shumway pretended to have invented a changeable back boot-tree before Mr. Lewis?

105 Ans. About the time that he left off work for me. I don't know but I might have heard him say during the year that he worked for me, that he didn't believe Lewis's patent was good for anything. I think that I first leaned that he pretended to have invented it before Lewis in the summer of '64.

(Adjourned to 3 p. m.)

Int. 40. Please compare pattern Lewis No. 2, with the centre-piece casting of tree, now shown you, marked "No, 1, C. H. T., G. D. N." State how often you have compared it before, and point out all the differences which you observe between the casting and the pattern.

Ans. I have compared these several times before. The difference I see near the journal end is the piece added on each side as I have before described; and there is another observable difference in the standard; an addition has been put upon the back side of it to strengthen it. Upon the journal part, the pattern has been trimmed out where the standard goes in more than in the casting, in consequence of the addition to the back side of the standard. Another alteration is in cutting back the pattern to accommodate the back, and the enlarging of the ears, as before described. I observe no other difference.

Int. 41. Has the front of Exhibit "No. 1, C. H. T., G. D. N.," been removed, as the parts of the other exhibit "Leland" and "Howe" were removed?

Ans. It has not. It is on the tree now.

Int. 42. The front part of the main casting of that tree cannot be seen now, can it?

Ans. Not unless the front of wood be removed.

Int. 43. What degree of familiarity have you with Shumway's boot-trees apart from having seen them when the parts are all together.

Ans. I have seen them in various stages of manufacture. I have repaired them more or less for the past three years, when I often take them all to pieces, or cause it to be done. Sometimes I have done it myself.

Int. 44. Now from your knowledge of Mr. Shumway's boot-trees, are you able to form an opinion as to the shapes of the front
106 part of the casting of Exhibit "No. 1, C. H. T., G. D. N. ?" I mean that part of the casting now covered by the wood.

(Objected to.)

Ans. I am.

Int. 44. Have you ever at any time seen that part of that casting which is now covered by the wood, or had any intimation from any source as to the shape of that particular part of that casting?

(Objected to.)

Ans. I have not.

Int. 46. You say you are able to form an opinion as to the shape of that part of the casting now hidden by the front. Have you such an opinion? If so, please state how you believe that part of the casting now hidden by the wood to compare with the front of exhibit "Lewis No. 2," and how positive you are in that opinion.

(Objected to.)

Ans. I have such an opinion. I believe that the casting was taken from the pattern referred to before the alterations which I have described were made upon the pattern. I believe the front part hidden by the wood corresponds exactly with the corresponding part of

that pattern. I don't discover any difference in the pattern and casting than that I have described, and therefore I am positive that the entire casting was taken from the pattern.

(Solicitor for Mr. Howe requests the solicitor for Mr. Newton to allow the front part of exhibit No. 1, C. H. T., G. D. N., to be removed, that the accuracy of witness's opinion may be tested.)

(Solicitor for Mr. Newton is not willing to consume time in making evidence, but wishes to confine the case to that which already exists, and therefore declines to mutilate the exhibit.)

Int. 47. What damage, if any, or mutilation would be likely to follow from removing the front of exhibit "No. 1, C. H. T., G. D. N.?"

Ans. Not any, if properly done.

(Solicitor for Mr. Howe repeats his request.)

(Solicitor for Mr. Newton, declining to answer, takes his silence for consent, and requests witness to remove the front of the exhibit. Witness says, I have no tools here to do it with.)

Int. 48. Will you bring tools with you to-morrow morning
107 to remove the front sufficiently to see the part of the casting covered by the wood.

Ans. I will, if it be so desired.

Int. 49. Please look at tree now shown you, marked "Youth's, G. D. N.," and state, if you know, what tree that is.

Ans. It is what we call a "youth's tree," represented to be made by E. L. Shumway, and I should say was one of his make.

Int. 50. Could the centre piece of that tree have been cast from the pattern of "Lewis No. 4?" I mean Shumway's youth's pattern which you bought.

Defendant objects to any examination of the witness in relation to the boot-tree referred to in the question, said boot-tree being the same as to which the witness was examined in his deposition previously taken in this case, and referred to in that deposition as the one examined by witness in Mr. Newton's shop in Westboro'.

Solicitor for complainant begs to ask how the solicitor for the defendant knows that the tree referred to and marked "Youth's, G. D. N.," is the same tree examined by witness in Mr. Newton's shop, and agrees to discontinue the examination in this point, when it is made plain that the tree marked "Youth's, G. D. N.," is the same tree referred to in Mr. Howe's previous deposition.

Solicitor for defendant knows this fact by information of the defendant, and by the testimony of deponent and other witnesses: or rather he believes this boot-tree to be the same, and knows of the existence of no other youth's tree in defendant's possession, and understands this to be the identical boot-tree, the use of which has been enjoined in this case, and for the previous use of which by defendant, and of which alone the present suit is now prosecuted against defendant and for infringement; and this he understands to be admitted in the previous deposition given by complainant, the present witness.

Solicitor for complainant regards the admission in a very different

light, and is not satisfied that the exhibit "Youth's, G. D. N.," is the same as that examined by Mr. Howe, and desires the examiner to put the question.

Ans. It could not.

Int. 51. Since what time do you believe that tree was made, and give your reasons for so believing.

108 Ans. I believe it has been made since the spring of 1864, because I never saw or knew of a tree made from a pattern like that before 1864.

Int. 52. What opportunities have you had for seeing trees of Shumway's manufacture, and to what extent have you seen them?

Ans. I have been in most of the boot-manufacturing shops where trees are used, in this State, and have repaired several hundreds of his trees during the last three and a half years.

Int. 53. Look at the bottom parts of the two backs of exhibit "Youth's, G. D. N.," and state whether or not you see any difference in that part of these backs between the backs of the youth's tree you saw in Mr. Newton's shop, referred to in your former deposition.

Ans. I do see a difference by use. When I first saw the backs of the youth's tree in Newton's shop, the tree had been used hardly any, and the pieces of wood at the bottom have been since broken out by use, and there is a mark in the side of the backs—a dent, which was not in the backs when I saw them.

Int. 54. How did the tree above referred to, which you saw in Mr. Newton's shop, compare, as regards the amount of use, with the tree marked "Youth's, G. D. N.?"

(Objected to, because it apparently assumes the trees to be different trees, contrary to the evidence in the case.)

Ans. This shows a great deal more use than the one that I saw at Mr. Newton's shop which hadn't been used, I should think, more than two weeks at farthest.

Int. 55. In your opinion, is it possible for a skilled man to swear positively with truth as to the identity of a tree, after it has been used, say one or two months, unless he has put some private mark upon it?

(Objected to as incompetent.)

Ans. I don't say it might not be possible that he could. That might depend upon peculiarities in the use of the tree.

Int. 56. Are you able to state positively whether the tree now before you, marked "Youth's, G. D. N.," is the same tree which you saw at Mr. Newton's shop?

Ans. I am not; but if it is not the tree, it is a tree that is made from the same pattern or kind of casting that I saw at Mr.

109 Newton's; precisely like it. What I mean to say is that it is either the same or one like it.

Int. 57. Do you believe it to be the same, or only one like it? State your reasons.

(Objected to as calling for matter of opinion.)

Ans. I am unable to say which. I think it may be the same one, only it shows a great deal more use than when I first saw it.

Int. 58. Mr. Otis Newton testifies that he saw two second-hand trees in Mr. Shumway's shop, and that the two trees he received from Mr. Shumway were those trees fitted over and varnished. Is it possible for any man to swear positively as to the identity of any particular second-hand boot tree, after it has been fitted over and varnished, in the absence of any particular mark?

Ans. I should think not.

And in answer to cross-interrogatories propounded to him by F. A. Brooks, esq., solicitor for respondent, deponent saith as follows, viz:

Cross-int. 1. I understand you to admit that the tree, marked "Youth's, G. D. N.," is the identical one which you saw in defendant's shop before commencing this suit; am I right?

Ans. No, not right.

Cross-int. 2. Do you deny it to be the identical one seen by you in Newton's shop?

Ans. I do not.

Cross int. 3. And you believe it to be the same, do you not?

Ans. I do, or another like it.

Cross-int. 4. Do you not believe it to be the same? Please answer directly.

Ans. I don't know that I can answer it any different.

Cross-int. 5. Do you believe it to be a different boot-tree from the one you saw in Newton's shop?

Ans. I do not.

Cross-int. 6. Is there any other boot-tree than this for the use of which by Mr. Newton you now prosecute this suit?

Ans. I think not.

110 Cross-int. 7. If this boot-tree was made prior to October, 1862, do you claim Mr. Newton to be liable for the use of it to you?

Ans. I do not.

Cross-int. 8. When did you first become the owner of the Lewis patent through Mr. Godfrey?

Ans. The deed was given January 2d, 1865. The bargain was made before that. I think in November, '63, and I was virtually the owner from that time.

Cross-int. 9. So far as the boot-trees like Lewis patent had been made and sold with Godfrey's consent prior to the sale to you, have you any right to interfere with the use of the same?

(Objected to on the ground that Mr. Howe is not competent now to decide his legal rights, because certain facts on which they depend are not now certainly known.)

Ans. I don't know that I have.

Cross-int. 10. Were you, when purchasing of Godfrey, aware of the fact that he had authorized the manufacture and sale of many boot-trees, while he held the patent titles thereto?

Ans. I understood him to say that he had, down to October, '62.

Cross-int. 11. When you undertook the boot-tree business in 1862, was it not with the view of depending solely or chiefly upon the title

of certain letters patent, originally issued to you in '48 as the inventor, and extended in 1862?

Ans. It was not.

Cross-int. 12. What other title had you on which to depend at that time, or for some time afterwards?

Ans. I had none of my own. Mr. Godfrey owned the Lewis patent at that time, and the arrangement was, that if the case against Eames on the Lewis patent, then in court, were sustained, I should pay Mr. Godfrey a certain sum on every tree made on account of the Lewis patent, and his half of the Howe patent.

Cross-int. 13. Was that suit in fact sustained, or has any suit been thus far sustained, upon the Lewis patent, to your knowledge?

(Counsel for Mr. Howe advises him to reply that that suit was sustained substantially, and to all intents and purposes, on the ground that that is the true construction of the opinion of the Supreme Court given in that case.)

111 (Counsel for defendant objects to any answer by the witness after the interference of complainant's counsel in the preceding suggestion, and withdraws the question.)

Cross-int. 14. Did you ever pay Mr. Godfrey a tariff on account of the Lewis patent before you purchased the same of him?

Ans. I paid him a certain sum of money to cancel the claim of the Lewis patent for what trees I made in '63. It was not exactly in the shape of a tariff or royalty. I paid him in a lump for the trees—made the sum of five hundred dollars.

Cross-int. 15. Were you compelled by Mr. Godfrey to make this payment to him as a means of getting control of your own invention?

Ans. No; I was not.

Cross-int. 16. Did you do it willingly and cheerfully?

Ans. I did after I agreed to.

Cross-int. 17. Did you not, in fact, consider the Howe patent to be at the bottom of, and to control all boot-trees whatsoever known as machine trees for sometime after you undertook the business in 1862?

Ans. I did.

Cross-int. 18. Did you not continue in that belief until November, '64?

Ans. I did.

Cross-int. 19. So long as you continued in that belief, did you consider it necessary to depend on the Lewis patent in your business?

Ans. Not wholly. I believe that the Lewis and Eames patent both infringed the original Howe patent, and I have that belief to-day.

Cross-int. 20. Did you acquire the Lewis patent until you found it impossible to hold parties accountable under your own patent?

(Objected to because the witness has already, in his answer to the 8th cross-interrogatory, testified that he acquired the Lewis patent in November, '63.)

Ans. I did before that time. That is, by an agreement.

Cross-int. 21. Do you mean that you did so before November, 1864?

Ans. I do.

Cross-int. 22. (De bene.) Your conversation with Shumway, referred to in 21st direct answer, took place before you owned the Lewis patent, did it not?

112 Ans. It did.

Cross-int. 23. (De bene.) The Lewis patent was not then expressly referred to in your conversation with Shumway, was it?

Ans. It's my impression that the Lewis and Eames patent and my patent were all talked over at the same time. We didn't set up any claim to control the Eames patent, or I don't mean to say that we did.

Cross-int. 24. Do you mean to swear, and do you swear, that in or about April, 1863, Shumway, in telling about his having no right to make new boot-trees, referred expressly to the Lewis patent as controlling such right?

Ans. I do not.

Cross-int. 25. Is it not true that what he said, if anything, to that effect referred to the Howe patent?

Ans. It did, but not wholly.

Cross-int. 26. How do you know he referred to any other when speaking about having no right to make new boot-trees?

Ans. Because he mentioned that he thought my patent covered the whole, that the Lewis patent was not good for anything, or something of that kind.

Cross-int. 27. You do not, then, mean to be understood that Mr. Shumway at anytime acknowledged the validity of the Lewis patent to you, directly or indirectly. Do you?

Ans. I do not.

JARVIS HOWE.

Deposition of Alden Leland, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 7*th*, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Alden Leland; age, 57; residence, Holliston, Mass.; occupation, boot and shoe manufacturer.

Int. 2. Please look at the tree now shown you, marked "Leland, N. A. P.," and state, if you know, from whom Mr. Howe obtained it.

Ans. He had it of me, from my shop.

113 Int. 3. How do you know it is the same tree that Mr. Howe got from you?

Ans. By the looks of the tree, and by a mark that I put on it which I see there; I should know it if it was not marked.

Int. 4. From whom did you purchase that tree?

Ans. I traded with Mr. Shumway for it; purchased it of him.

Int. 5. What did you pay for it?

Ans. I paid a brass tree and some money for it; I forget how much.

(Counsel for defendant declines to cross-examine.)

ALDEN LELAND.

Deposition of P. R. Otis, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 7, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. P. R. Otis; age, 40; residence, Westboro', Mass.; occupation, boot-treer.

Int. 2. Where, and for whom did you work in the years '55 and '56?

Ans. For Otis Newton, at Westboro'.

Int. 3. When did you first go to work for him?

Ans. Somewhere in the summer of '55.

Int. 4. How many boot-trees were there in use in his shop, as near as you can recollect?

Ans. I should think somewhere from six to seven.

Int. 5. What kind of trees were they?

Ans. If my memory serves me, there was one slide tree, one four-incline tree, and the balance old brass trees.

Int. 6. While you were there at that time was any talk had with Mr. Shumway as to swapping off the brass trees for the two-incline trees with changeable backs, like that now shown you, marked "Leland, N. A. P. ?"

(Objected to as immaterial.)

Ans. There was talk betwixt Mr. Newton and me, but whether there was with Mr. Shumway, I couldn't tell.

114 Int. 7. Please state what talks there were between Newton and yourself as to that.

Ans. The substance of it was the benefit of the other trees over the brass ones, and whether it would be desirable to change; something like that.

Int. 8. Was anything said about Shumway's terms of exchange? If so, tell the substance of it.

Ans. This conversation was, if I mistake not, Shumway's tree; I mean one like "Leland, N. A. P.," was $40 or $45, and he would exchange or allow ten dollars for each brass tree.

Int. 9. What became of that four-incline tree?

Ans. My impression is, that it was changed for a two-incline.

Int. 10. How many trees did Newton exchange before you left in '56, as near as you can recollect?

Ans. It would be impossible for me to say, because I don't recollect.

Int. 11. How were the two-incline trees generally regarded, as compared with the old brass tree, when they first came out?

Ans. They were thought altogether superior, and to have great advantage over the old brass tree.

P. R. OTIS.

Deposition of Cyrus Pickering, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 7TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Cyrus Pickering; age, 53; residence, Westboro', Mass.; occupation, farmer.

Int. 2. Did you ever work for Mr. Otis Newton as a boot-treer? If so, when first, and for how long at that time?

Ans. Mr. Plimpton Otis hired me, and paid me, I think; I worked at Mr. Otis Newton's shop; I can't remember the date; it was when Mr. Otis worked in Union block; I can't tell how long I worked for him, but over six years, certainly; I didn't leave till after Plimpton Otis left.

115 Int. 3. Please state how many men's trees Mr. Newton then had, as near as you can recollect.

Ans. I can't answer you that, because I don't know how many he owned; I don't recollect exactly; I have the impression we were working with two.

Int. 4. How many other trees, as near as you recollect, were there in use there?

Ans. I can't remember, because there were so many of them borrowed; sometimes we would have six or eight trees, borrowed and all.

Int. 5. How many trees in all, including the men's trees, according to your best recollection, were used in Mr. Newton's shop—I mean leaving out the borrowed trees?

Ans. I don't know but they were all borrowed; I know we borrowed them when they were not using them in the other shops, and we didn't carry them back till they were called for.

Int. 6. How many trees in all, including the men's trees, were used in Mr. Newton's shop in Union block while Mr. Plimpton R. Otis remained there, according to your best recollection?

Ans. I can't tell you; I have the impression there were some six; I wouldn't swear to the number.

Int. 7. What kind of trees were these six?

Ans. I have the impression that the ones most in use were iron trees or brass trees—brass trees, I believe, we called 'em; there was wooden trees there, Shumway's, and slide trees.

Int. 8. When you first went there what kind of a tree did you use?

Ans. I used the men's brass tree.

Int. 9. Do you recollect a four-incline tree there; I mean a tree like the one marked "Leland, N. A. P.," except that the front moved out as well as the back; I mean when you first went there, or at any other time?

Ans. I do not.

Int. 10. Did you use, at Mr. Newton's shop, a tree like "Leland, N. A. P.?" If so, state about how long it was, as nearly as you recollect, after you first went there.

116 Ans. I did use one almost all the time I worked there after I left working on the old brass tree; I liked that best, but they told me they'd throw it out of the shop if I didn't stop.

CYRUS PICKERING.

(Counsel for respondent declines to cross-examine.)

Deposition of Joseph B. Crosby, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 8TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Joseph R. Crosby; age, 38; residence, Boston, Mass.; occupation, consulting engineer and solicitor of patents.

Int. 2. Please state what experience, if any, you have had in the construction of patterns for casting, and with castings.

Ans. I served a regular apprenticeship in a machine shop in this city, there and then thoroughly learning the pattern-maker's trade, at which I became a first-class workman; subsequently, for several years, I carried on a shop in this city for the construction of patterns for castings, and of models for machinery; during all this time I was in and out of foundries almost daily, and for about two years of the time my apprenticeship had nearly entire charge of the foundry business of the machine shop, then employing about one hundred hands.

Int. 3. Please compare pattern "Lewis, No. 4," with the centre casting of boot-tree marked "Howe, N. A. P.," removing the front for that purpose, and state how they differ, if at all, giving your reasons for any differences you may find, if you can.

Ans. The casting of the tree referred to was made from the pattern referred to me, or one exactly like it.

Int. 4. Compare casting of tree marked "Leland, N. A. P." with the pattern "Lewis, No. 2," taking off the front of the tree for the purpose, and state as desired above.

Ans. I have no hesitation in saying that this casting was made from this pattern, or from one exactly like it, though there is little, if any, doubt in my mind that the casting was made from this
117 identical pattern, and not from a copy of it, for reasons which I will now explain.

Viewing both pattern and casting so as to look upon that face on which the foot part fits, there will be observed on the under side of the flange near the journal bearing, and on that part near by the slot in which the spring is located, two slight marks or grooves, which I will now describe by referring particularly to the pattern. They are caused by the filling of wax in the pattern on each side of the core print; the wax being filled between the wood of the pattern and the wood of the core print. Though this wax is varnished over so that it is not readily seen, its location may be ascertained by puncture with a needle. Now close inspection of the corresponding part of the casting will show the exact corresponding imperfection and marks. Had this casting been taken from a pattern intended to be

Deposition of Cyrus Pickering, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 7TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Cyrus Pickering; age, 53; residence, Westboro', Mass.; occupation, farmer.

Int. 2. Did you ever work for Mr. Otis Newton as a boot-treer? If so, when first, and for how long at that time?

Ans. Mr. Plimpton Otis hired me, and paid me, I think; I worked at Mr. Otis Newton's shop; I can't remember the date; it was when Mr. Otis worked in Union block; I can't tell how long I worked for him, but over six years, certainly; I didn't leave till after Plimpton Otis left.

115 Int. 3. Please state how many men's trees Mr. Newton then had, as near as you can recollect.

Ans. I can't answer you that, because I don't know how many he owned; I don't recollect exactly; I have the impression we were working with two.

Int. 4. How many other trees, as near as you recollect, were there in use there?

Ans. I can't remember, because there were so many of them borrowed; sometimes we would have six or eight trees, borrowed and all.

Int. 5. How many trees in all, including the men's trees, according to your best recollection, were used in Mr. Newton's shop—I mean leaving out the borrowed trees?

Ans. I don't know but they were all borrowed; I know we borrowed them when they were not using them in the other shops, and we didn't carry them back till they were called for.

Int. 6. How many trees in all, including the men's trees, were used in Mr. Newton's shop in Union block while Mr. Plimpton R. Otis remained there, according to your best recollection?

Ans. I can't tell you; I have the impression there were some six; I wouldn't swear to the number.

Int. 7. What kind of trees were these six?

Ans. I have the impression that the ones most in use were iron trees or brass trees—brass trees, I believe, we called 'em; there was wooden trees there, Shumway's, and slide trees.

Int. 8. When you first went there what kind of a tree did you use?

Ans. I used the men's brass tree.

Int. 9. Do you recollect a four-incline tree there; I mean a tree like the one marked "Leland, N. A. P.," except that the front moved out as well as the back; I mean when you first went there, or at any other time?

Ans. I do not.

Int. 10. Did you use, at Mr. Newton's shop, a tree like "Leland, N. A. P.?" If so, state about how long it was, as nearly as you recollect, after you first went there.

116 Ans. I did use one almost all the time I worked there after I left working on the old brass tree; I liked that best, but they told me they'd throw it out of the shop if I didn't stop.

CYRUS PICKERING.

(Counsel for respondent declines to cross-examine.)

Deposition of Joseph B. Crosby, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 8TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Joseph R. Crosby; age, 38; residence, Boston, Mass.; occupation, consulting engineer and solicitor of patents.

Int. 2. Please state what experience, if any, you have had in the construction of patterns for casting, and with castings.

Ans. I served a regular apprenticeship in a machine shop in this city, there and then thoroughly learning the pattern-maker's trade, at which I became a first-class workman; subsequently, for several years, I carried on a shop in this city for the construction of patterns for castings, and of models for machinery; during all this time I was in and out of foundries almost daily, and for about two years of the time my apprenticeship had nearly entire charge of the foundry business of the machine shop, then employing about one hundred hands.

Int. 3. Please compare pattern "Lewis, No. 4," with the centre casting of boot-tree marked "Howe, N. A. P.," removing the front for that purpose, and state how they differ, if at all, giving your reasons for any differences you may find, if you can.

Ans. The casting of the tree referred to was made from the pattern referred to me, or one exactly like it.

Int. 4. Compare casting of tree marked "Leland, N. A. P." with the pattern "Lewis, No. 2," taking off the front of the tree for the purpose, and state as desired above.

Ans. I have no hesitation in saying that this casting was made from this pattern, or from one exactly like it, though there is little, if any, doubt in my mind that the casting was made from this

117 identical pattern, and not from a copy of it, for reasons which I will now explain.

Viewing both pattern and casting so as to look upon that face on which the foot part fits, there will be observed on the under side of the flange near the journal bearing, and on that part near by the slot in which the spring is located, two slight marks or grooves, which I will now describe by referring particularly to the pattern. They are caused by the filling of wax in the pattern on each side of the core print; the wax being filled between the wood of the pattern and the wood of the core print. Though this wax is varnished over so that it is not readily seen, its location may be ascertained by puncture with a needle. Now close inspection of the corresponding part of the casting will show the exact corresponding imperfection and marks. Had this casting been taken from a pattern intended to be

like the one I hold, it is not at all probable that this exact imperfection would have been duplicated. I have measured the pattern and casting carefully, and find the dimensions of each to correspond, with proper allowance for shrinkage of the iron and removal of portions thereof in finishing. There are two slight differences between the pattern and the casting, one of which may be seen on the reverse side to that about which I have testified, and near the heel portion of the tree. In the casting, it will be seen that the slot for the lock does not extend nearer to the heel or the sole of the heel, than $\frac{3}{8}$ of an inch, while in the pattern it extends to within 3-16 of an inch. But there are evident marks in the pattern of removal of 3-16 of an inch of the wood. So that it is evident to me that the casting was made before the pattern was altered. On each side of the pattern near its journal end, there have been additions of small pieces of wood, about $\frac{3}{4}$ inch long apparently for the purpose of shortening the place for the reception of the side brasses. The casting was either made before the alteration of the pattern, or else the material supplied by this alteration of the pattern has been cut away from the casting. The ears to which the lock is pivoted are larger in the pattern than in the casting.

Int. 5. How do these alterations affect your conclusion that the casting referred to was taken from that particular pattern, if at all?

Ans. It is not from the alterations that I conclude that this casting was taken from this pattern. I formed my opinion from other indications. The alteration in the ears that I have noticed,
118 or rather the substitution of new ears for those originally on the pattern, is a matter likely to be called for two or three times or more in the lifetime of this pattern, as they are so small and salient and unprotected as to be very liable to injury, and to require replacement, in which they would be very likely to be reinforced or enlarged in the practical operation of the tree.

Int. 6. Please compare pattern "Lewis, No. 2" with the casting of Exhibit "No. 1, C. H. T., G. D. N.," and state how they compare.

(Counsel for complainant requests Mr. Howe to remove the front of Exhibit "No. I, C. H. T., G. D. N.," as he said he would do. Counsel for respondent does not interfere while counsel for complainant removes the front of the exhibit partially. Counsel for complainant adds to above question—and state how much of the front of that casting is now visible.)

Ans. There is not enough of the front of the casting visible to enable me to testify upon that part of it. Since I answered as above, I have got a little more insight at this front. I find near the flange, which is at the journal end, and through which the screw passes to hold the front on, marks which are duplicates of those about which I testified in my fourth answer. I mean those caused by the irregularities between the wood and the wax as stated in my fourth answer. I find on the back of this casting near the projection from which the standard springs or starts, corners or inclines, reaching from the face of said projection to the face of the front of the cast-

ing. These corners are peculiar, and are seen best by looking at the edges or sides of the casting and pattern, so as to show the profile of the corners. Examining them thus and also in plan, I should say that they are identical with each other in shape. I have with considerable care measured the casting, and find that, making due allowances for shrinkage of iron, finishing and rapping the pattern in the mould, the two correspond except in some particulars which I will note. The standard on the casting is evidently quite different from the pattern. The slot for the lock near the heel does not extend so near the sole of the heel as that in the pattern. The ears to which the lock is pivoted, are smaller in the casting than in the pattern.

119 Int. 7. In your opinion, from what pattern was that casting made, and how positive are you?

(Objected to as not proper matter for opinion testimony.)

Ans. I have a very strong opinion that this casting was made from this pattern, though the pattern then was not in the exact state in which I now find it. The standard in the pattern has been changed since this casting was made, (answer after the words "I now find it," objected to,) as also the ears for the lock and the slot for the lock. I have before mentioned certain thin pieces on the sides of (any further answer objected to, question having been already fully answered) the pattern which looks like additions thereto. They might have been put upon the pattern before or after the casting was made. If put on before the casting was made, the iron resulting therefrom has been cut away in the casting.

Int. 8. Do you see any other indications from which you conclude that the casting referred to was taken from this identical pattern? If so, please describe them, and state your opinion upon this point, and how positive you are.

Ans. I do see such indications. They are found in the exactness with which the irregularly curved parts of the casting correspond with the similar parts of the pattern. If this pattern were a perfectly plain one, I mean made with plane surfaces and with turned surfaces only, I should not like to give an opinion that any particular casting was produced from any particular pattern, because of the ease with which skilful workmen can duplicate such patterns. I have given my opinion in this instance, because of certain peculiar marks found in both pattern and casting, which would not be likely to be duplicated in a duplicate pattern. The curves are such as are not made by rule, but are worked out by the judgment of the pattern-maker, sometimes under directions, and the irregular notches correspond with extreme exactness in both pattern and casting. I have no doubt but that this casting was taken from this pattern, when it existed without the changes therein which I have named.

Int. 9. In your opinion has that pattern been used much or little?

Ans. It has the appearance of a pattern that has been used a good deal under good care.

Int. 10. Look at tree now shown you, marked "Youth's, G.

120 D. N.," and state whether it is possible that the casting in that tree could have been taken from pattern "Lewis No. 4?"

Ans. It was not taken from this pattern.

Counsel for defendant cross-examines as follows:

Cross-int. 1. Is it not true that a duplicate casting like that found in Exhibit C. H. T. cannot be produced from Exhibit Lewis No. 2, in the state in which you now see it, or ever saw it? I mean from said model used as a pattern to be cast from.

Ans. It is.

Cross-int. 2. In comparing these two as you have done in regard to curved lines found therein, you have judged by your eye solely, that is, without measuring or comparing the curves with mathematical accuracy, have you not?

Ans. I have done so to a considerable extent, the state of the casting, owing to the presence of the back, preventing a very critical examination. I did take one close measurement at a point where exactness would not have been expected in a duplicate model, and at that point found the pattern and casting to agree exactly. In the corners and angles of the parts which in a boot-tree do not require mathematical exactness, I find such an exact correspondence, by measurement as, in my judgment, would not have been likely to be produced by use of a duplicate pattern.

Cross-int. 3. Please look at the projection at the bottom of the standard near the journal in Exhibit Lewis No. 4, and state if Exhibit C. H. T. does not differ from said pattern in that respect. I cut a notch in the part referred to.

Ans. The part marked with the notch is a core print, and does not exist at all in Exhibit C. H. T., but the hole left in said exhibit is just such a hole as would result from the use of a core suited to this print.

Cross-int. 4. Does not Exhibit No. 1, C. H. T., differ from model Lewis No. 2? that is, would not different casting from Exhibit No. 1. C. H. T., as it now is, result from the use of Lewis No. 2 as a model for such casting as it now is, in regard to this projection, I mean?

Ans. I answer yes to that, if I am not allowed to suppose the use of the core at that place.

121 Cross-int. 5. Do you mean to be understood that any other differences between the two might be accounted for on the same theory, that is, result from the particular method of casting employed, or can they be accounted for?

Ans. I do mean to be so understood. For in my direct testimony I viewed the projection at the heel-end of the pattern as a core print. If it is not a core print, then there should be in the casting a corresponding piece of iron.

Cross-int. 6. Are there any differences which might not be accounted for on this theory, to wit, a difference in the mode of employing cores?

Ans. Yes, there are other differences which cannot be so accounted for; I have mentioned some of them in my direct examination.

Cross-int. 7. Does not model Lewis No. 2 appear to have been formed in part by turning?

Ans. It does.

Cross-int. 8. If a casting were taken from Lewis No. 2 as a pattern, would not the roughnesses or indentations therein cause protuberances in such casting, of which there are no indications in Exhibit No. 1. C. H. T.?

Ans. If a casting were now taken from the pattern, there would be protuberances upon it corresponding with the indentations, provided the moulder did not use his sleeking trowels in finishing up his moulds, and provided also that such indentations are smooth enough to deliver the moulding sand from them instead of retaining it. Roughnesses that are projecting would appear in casting, provided they were not removed in the mould by the moulder.

Cross-int. 9. Have you ever known either of these models or castings existing in any other form than their present?

Ans. I have not.

Cross-int. 10. And in their present form one could not be produced from the other, is it not so?

Ans. It could not.

Adjourned to 10 a. m., Monday, 10th inst.

Direct resumed by J. E. Maynadier, esq.:

Int. 11. You have been interrogated as to certain parts of
122 the pattern "Lewis No. 2," one of which Mr. Brooks marked with a notch. You will observe two other parts so marked, one opposite the part marked by Mr. Brooks, and one at the extremity of the pattern. Please state fully what these parts are, and explain their uses.

(Objected to unless witness has knowledge on the subject not indicated in his previous testimony.)

Ans. The parts so marked in this pattern are core prints. There is also another print at the other extremity of the pattern not marked. The purpose of these prints is to make depressions in the mould to receive sand cores, which make holes in some cases and depressions or grooves in other cases. Knowing the construction of a boot-tree as I do, I am able to swear positively that these projections, of which I now speak, are core prints, and intended so to be, and not intended to form corresponding projecting parts of iron in the casting. The small unmarked print at the top of the tree, and the other print which is in two parts, each of which is marked with a notch, serve to make places in the mould to support different ends of the same core.

Int. 12. In the manufacture of a boot-tree, what are the purposes of these cores? I mean what parts of the mechanism of the machine do these cores leave room for?

Ans. The core at the heel-end of the tree makes the recess for the dove-tail which holds the foot part to the leg. The core at the top of the tree makes the hole through the journal through which the stretching-rod is to pass.

Int. 13. What would be the practical value of a casting taken from either of these patterns regarding core prints not as core prints, but as parts of the pattern to be reproduced in the casting, for use in a boot-tree?

Ans. It would be worth so much per pound for scrap metal to be remelted, because it would cost more to make the recesses so omitted than the whole value of the casting.

Int. 14. You compared in your direct testimony pattern "Lewis No. 2" with the main casting in "Exhibit No. 1, C. H. T.;" please state when you first saw that casting, and whether or not you saw it before you were interrogated with regard to it.

123 Ans. I never saw the casting before I was interrrogated with regard to it.

And in answer to cross-examination resumed, he saith:

Cross-int. 11. I judge from your last preceding answers that the examination of a pattern of wood, from which an iron casting has been taken, will not enable a person to determine whether the casting was taken from the pattern, unless he knows how far the casting has been modified or varied by the use of core prints, and the consequent modification of the casting thereby; is it not so? I mean if it had been so modified by the use of core prints.

Answer. It is not so.

And in answer to direct resumed, deponent saith:

Int. 15. Is it not perfectly plain to any man at all skilled in the use of patterns, who has ever seen a boot-tree, that the parts of the pattern "Lewis No. 2" and "Lewis No. 4," which you testified are core prints, are core prints and nothing else?

(Objected to as leading, as not rebutting, and as implying a knowledge of the particular style of boot-tree to be cast from the particular model independent of the model itself.)

Ans. It is plain to any man who is familiar with this kind of boot-tree.

Int. 16. What particular knowledge have you of boot-trees in general?

Ans. I've seen about all the trees that have been patented, have studied the specifications of several patents, have seen them in use, and have testified upon their construction as an expert in U. S. courts.

J. B. CROSBY.

Deposition of Lucius F. Hobbs, taken, subscribed, and sworn to before N. Austin Parks, examiner.

JULY 6TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Lucius F. Hobbs; age, 38 years; residence, Brookfield, Mass.; occupation, shoe finisher.

124 Int. 2. Where did you work for a year before April, '55, and what did you do?

Ans. For Charles Fales, in Brookfield, finishing boot bottoms, and I treed some.

Int. 3. How many trees and what kind did Fales have then?

Ans. When I first went there he had only one patent tree and two slide trees.

Int. 4. While you were there did you get any trees? If so, how many, and what kind were they?

Ans. I got two. Bliss trees.

Int. 5. Did you get a bill of those trees? If so, what has become of it?

Ans. I did. I attached it to an affidavit it this case. It was marked A.

Int. 6. When did you get those trees, where, and of whom?

Ans. In September, '54, at Worcester, of George W. Bliss. I think that's the name.

Int. 7. What kind of backs did these trees have? And state whether or not they were removable.

Ans. I think they were composition ones, not removable.

Int. 8. How did the machine tree which Fales had compare with those you got from Bliss?

Ans. I think they were exactly alike.

Int. 9. What sized tree was that Fales had?

Ans. A man's tree.

Int. 10. When did you first hear of a removable back tree, and from whom?

Objected to as immaterial and hearsay.

Ans. I think in 1854, from Charles Fales.

Int. 11. When was Fales' shop burnt, when was his new one built, and when did he get into it?

Ans. It was burnt in February, '55. His new one was built between April 1st and July 1st, and he got into it some time in June, I should think, '55.

Int. 12. Did he get a new tree shortly after he got into his new shop? If so, did you see it, and was it like the man's tree you had when you were with him?

125 Ans. He did. I saw it. It was not like the man's tree inquired of.

Int. 13. What was the difference?

Ans. It had a removable back like the one now in use.

Int. 14. Do you know how many inclines and cross-heads it had?

Ans. I do not.

Int. 15. Were you employed there at the time, or did you go in to see it because it was a new thing?

(Objected to as leading.)

Ans. I was not. I went to see it because it was a new thing.

Int. 16. What became of the trees you got from Bliss?

Ans. I sold them to Charles Fales.

Int. 17. Do you know what trees were generally used in Brookfield up to '55? If so, what kind were used?

Ans. A patent tree. I couldn't say what kind.

Int. 18. Like the patent tree Fales had and the one you bought of Bliss? If not, how different?

Ans. I think they were, but I don't know.

And in answer to cross-interrogatories proposed to him by F. A. Brooks, esq., deponent, saith as follows:

Cross-int. 1. Did you buy the trees you spoke of for Mr. Fales or for yourself?

Ans. For myself.

Cross-int. 2. Do you recollect examining them particularly?

Ans. I don't know as I examined them particularly any more than any other tree that I worked on.

Cross-int. 3. Did you compare these trees at the time you bought them with any or all which Mr. Fales had?

Ans. I did not that I know of.

Cross-int. 4. Do you mean to swear positively that there was no difference between the man's tree belonging to Mr. Fales and those you bought?

Ans. A difference as to size; that's all I think there was.

Cross-int. 5. Will you swear that there was no difference in their construction?

Ans. I will swear that there was no essential difference in their construction.

126 Cross-int. 6. Did you work on the man's tree?

Ans. I did not.

Cross-int. 7. If you did not work on the man's tree, or compare it with those bought by you, how do you know that there was no essential difference in their construction?

Ans. My brother worked on the man's tree, and was always telling me how much better I could get along if I had a patent tree, and he and Mr. Hawes both treed on my boys' and youths' patent trees, when they hadn't other work, and allowed me so much a case.

Cross-int. 8. Then, of your own knowledge, you know nothing of Mr. Fales's man's tree; I mean independently of anything that was said about it?

Ans. Nothing more than any man would working right beside a man using the tree, and an intimate friend of his.

Cross-int. 9. Have you not said to Mr. Shumway that your recollection is indistinct in relation to this matter?

Ans. No, sir. I never saw him but once in my life that I know of. He came in to me the other day in the shop, and introduced himself as Mr. Shumway. I asked him his name, as I didn't know him. He said my testimony would (objection is made to conversation as not responsive to the question by the respondent. Witness proceeds at request of counsel for complainants) not be good for anything, as he had such a crowd of witnesses against me. I told him that it did look bad, because my witnesses on my side to prove my statement were

all dead. He said he could cause me considerable trouble, but he should not. I merely told him that if I swore to nothing, he could have nothing to hurt me for then.

And in answer to direct interrogatory, resumed by J.E. Maynadier, deponent saith:

Int. 19. Did you buy your patent trees by advice of any one; and if so, by whose advice?

(Objected to as immaterial and as hearsay.)

Ans. By advice of my brother.

Int. 20. What tree did he use when he gave you that advice, and what trees were you using then?

(Objected to as above.)

127 Ans. He was using Fales's patent tree, and I the slide tree.

Int. 21. Did you mean to buy trees like the one he was using, in pursuance of his advice?

Ans. I did, sir.

And in answer to cross-resumed, deponent saith:

Cross-int. 10. Do you know anything about that tree, except from what it was called by the workmen?

Ans. I do not, only from what I should see working side of it.

Cross-int. 11. And from what you saw while working beside it, all you know is that it treed boots like any other machine tree, is it not?

Ans. It did. Yes, sir, that's all I know about it.

And in answer to direct interrogatory resumed, he saith:

Int. 22. Did you ever see it when there was no boot in it?

Ans. Yes, sir.

Int. 23. How often did you see it? State generally.

Ans. Every day, more or less, when I was in the shop.

Int. 24. About how long were you in the shop?

Ans. Most of the time from April, 1854, till the shop was burnt.

Int. 25. Do you know how such trees as that are commonly known among treers?

Ans. In our neighborhood they are generally called the patent tree. I don't remember any other name.

Int. 26. Did you ever hear them called the brass or Bliss tree?

(Objected to as above.)

Ans. I think I've heard them called the Bliss tree.

And in answer to cross-interrogatories, resumed by F. A. Brooks, esq., deponent saith:

Cross-int. 12. Did you ever examine Fales's man's tree, in order to ascertain whether it was distended by means of a toggle joint or not?

Ans. Not that I recollect of.

L. F. HOBBS.

128 Deposition of Benjamin D. Godfrey, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 5TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Benjamin D. Godfrey; age, 53; residence, Milford, Mass.; occupation, boot manufacturer.

Int. 2. How long have you been a manufacturer of boots, and to what extent?

Ans. I've been doing an extensive business since the fall of 1848.

Int. 3. What kind of boot-trees have you used from '48 to the present time?

Ans. The old-fashioned wooden slide tree up to the time of the introduction of R. L. Lewis's trees. Since that time we have used them, and none other. We never used the old-fashioned Howe tree, because we couldn't change the backs.

Int. 4. When was Lewis's tree introduced, and state your connection with that invention previous to the negotiations between Shumway and Lewis, as to their partnership?

Ans. It was introduced, as near as I can remember, between the 1st July, '54, and 1st January, '55, in the fall of '54. In the month of July, or possibly, June, '54, Mr. R. L. Lewis came to me with a model boot-tree, the principal feature of which consisted in a changeable back. I looked at it, and saw at a glance that it was just the tree we demanded over the old iron tree. I told him that I believed it to be a capital thing, and that it would be sure to take the place of the wooden tree and Bliss's (as we called it then) iron tree. It is much easier to tree boots on the patent trees than on the old wooden slide tree. I had never introduced Bliss's or Howe's iron tree into my business, from the fact that the same leg that you treed a No. 6 on, you had got to tree a size 11 on. For the small size the back would always be too large, and for the large size too small, and they wouldn't be in proportion. You couldn't tree perfectly the extreme sizes on it. It would disfigure or put the boots out of shape. I saw the improvement of Mr. Lewis answered those objections, and would make a perfect tree, and, subsequently, agreed with Mr. Lewis
129 to pay all expenses in getting up a model, and taking out a patent for a half interest in it; which arrangement Mr. Lewis accepted, and we immediately took steps to get out a model, and to get out the papers for a patent.

Int. 5. Was this agreement in writing? and if so, where is the writing now, and what is the date of it, if you know?

Ans. The agreement was not in writing at first, but was afterwards put in writing. Mr. Giles drew it, and the papers have been so much in court that I have kept no run of it. My impression is that he assigned the whole to me, and that I gave him an agreement to account to him for half the profits; but I am not certain, it is so long since I have seen the papers.

Int. 6. I hand you now a certified copy of the assignment from R. L. Lewis to yourself, which by its terms purports to have been

made "pursuant to my agreement, dated July 26th, 1854." What agreement was that?

Ans. It is the agreement I have referred to.

Int. 7. Whom did you employ to make the first working tree after Lewis's invention?

Ans. Charles T. Eames, of Milford.

Int. 8. Did you know Mr. E. L. Shumway at this time? if so, how long had you known him, and how had you known him?

Ans. I did. I had known him a year or two as the manufacturer of the Bliss or Howe tree.

Int. 9. What steps, if any, did you take to have trees of Lewis's invention manufactured and put into the market?

Ans. The first step was to get a proper person to make the trees to introduce them. I had known Shumway, and had frequently seen him putting up the Bliss trees, which he told me he made by paying Mr. Bliss a patent tariff on. In my interviews with him I explained to him the reasons I had for never taking hold of the Bliss or Howe tree, which were the objections to it of not treeing the boots uniform, and its want of a changeable back. I expressed to him my opinion that the new tree would supersede the Howe tree altogether, and in case that he would like to take hold and manufacture the Lewis tree, I should like to arrange with him to do so, as he was in that business.

He concurred with me in my opinion about the trees, said he
130 should like to make them; thought he could do it as well, or better, than any one else, and, subsequently, made an arrangement with me for him and Mr. Lewis to make the trees, and pay me a tariff the same as he did Mr. Bliss. The price agreed on was ten dollars for men's, and five dollars for youths' and boys', per set.

(Defendant objects to all statements regarding interview between himself and Shumway, and to the report of the same.)

Int. 10. What patent for boot-trees did you own at that time?

Ans. No patents.

Int. 11. How was it, then, that Shumway agreed to pay you a tariff?

(Objected to.)

Ans. Because I owned Lewis's invention, for which a patent had been, or was about to be applied.

(Answer objected to because inference of witness.)

Int. 12. When you first explained to Shumway the new feature of the Lewis tree, what opinion, if any, did he express as to its novelty and value?

(Objected to.)

Ans. That a tree needed a changeable back, and that with this changeable back Mr. Lewis would certainly supersede the others. He expressed no opinion that he had ever seen a changeable back. He said that it was what was wanted. He admitted the objection to the Howe tree, and that this improvement of Lewis would overcome that objection.

Int. 13. Did Mr. Shumway then say that he had previously made, or seen, or heard of any changeable back tree?

(Objected to.)

Ans. He did not.

Int. 14. Did he then intimate in any way whatever that he had before that made, seen, or heard of any such tree?

(Objected to.)

Ans. He did not.

Int. 15. Did you derive any such impression or idea from anything that Mr. Shumway then did or said?

(Objected to.)

Ans. I did not.

Int. 16. What idea did you derive as to this from anything he then did or said?

(Objected to.)

Ans. My answer was that he had never seen one; that the invention was novel, that he was pleased with it, and wanted to make
131 the trees, and would pay any fair tariff that I would fix upon the privilege of making them.

Int. 17. I believe you afterwards purchased the Howe patent, and an interest in the Upfield patent. Please state when you purchased those patents.

Ans. I know when I purchased the Howe patent from this circumstance: I had licensed, or agreed with Shumway, or Shumway and Lewis, to manufacture trees after Lewis's improvement. They were universally admitted by the trade, as we introduced them, to be just what was wanted, and on Mr. Shumway's discontinuing to make the iron trees, Mr. Alonzo Bliss, who had the control of the Howe patent, came and notified me that the trees that Shumway was making after the improvement of Lewis was an infringement upon the Howe patent, and that he should hold me responsible for it. I took advice of my counsel, Mr. Giles, who thought it was an infringement, and I then bought Bliss's patent, in August, '55, I think. The Upfield patent I bought just previous; I think in July, '55.

Int. 18. Did you, after you bought the Howe and Upfield patents, give a license to Mr. Shumway alone? if so, when was it?

Ans. I did, under these circumstances: Mr. Shumway and Mr. Lewis did not get on very harmoniously together, and I had an interview with Shumway, and agreed that he might go on and make the trees alone, individually. I think this was some time in September, '55, and that having made that purchase he could then mark his boot-trees under either patent. I think he then marked them under the patent of Upfield, which I believe was 1850.

Int. 19. Did Mr. Shumway ever pay tariff? if so, when first?

Ans. He first paid me a note February 21st, 1856, at four months, for : 0.

Int. 20. Did you afterwards have trouble with him about a tariff? if so, state when and what settlement was then come to.

(Objected to.)

Ans. I had a litigation with Mr. Charles Eames, of Milford, who was then making the trees, and Mr. Shumway said that if I couldn't compel Mr. Eames to pay a tariff, he didn't think he ought to. I got Mr. Shumway to render me an account of the number he had

made, which he did up to the date of December 31st, 1859.

132 And according to the statement that he rendered, there was $1,545 my due. I wrote Mr. Shumway and made an appointment for him to meet me at my store in Boston to make a settlement, if possible, with him. I desired to get some admission by which I could have a witness, and spoke privately to Thomas Shaw, a salesman in my employ, that I wished him to just be present, and if I could get Mr. Shumway to put his signature to a thing, to see him write it. He was present in my office and gave off the trees, and I set them down as he stated. I had threatened to sue him immediately, and to stop him from manufacturing the trees. His only objection to paying the tariff was that I didn't make Mr. Eames pay. I had got all the amount due on his license, and he said Mr. Lewis owed him $115, which I deducted from the account. Then I said, "Mr. Shumway, you state that when Mr. Eames pays, you will pay this account?" He said "Yes." I said, "That there may be no mistake about this agreement, Mr. Shumway, I'll just put it in writing, and you give me your signature," and he signed the paper, agreeing to pay the back account when Mr. Eames paid, and also afterward to pay monthly, whether Eames paid or not, as I had threatened to publish him and prevent his making the trees, if he didn't pay.

Int. 21. Did he then intimate in any way that the Lewis patent was invalid?

(Objected to.)

Ans. No, he never did.

Int. 22. When did you learn that Shumway pretended that he had made changeable back trees before Lewis?

Ans. Never until the settlement of my case which I had brought against him, at Worcester, in 1865, and I learned that first from Mr. Brooks, Mr. Shumway's counsel, who had gone up to attend to that case. This was the first intimation I had ever had from any one that a changeable back tree had ever been made before Lewis.

Int. 23. What case was that you have just referred to, when was it brought, and for what?

Ans. It was brought against Shumway by me in June, 1862, for amount due me for tariff for making trees previous and subsequently to my arrangement with him in Boston.

Int. 24. Please produce the writing signed by Shumway and witnessed by Shaw, which you have referred to.

133 Ans. Yes, here it is.

(Paper produced and marked Exhibit "Godfrey, N. A. P., examiner.")

Int. 15. How is it that that bill is receipted in full?

Ans. Why, I had asked him to give me a note. I receipted the bill and handed it to him making the proposal, but he refused to pay it, and I then kept it, making him sign the acknowledgment at the bottom of it.

Int. 26. How was this suit, that you have referred to against Shumway, settled?

Ans. I attached all the available property that I or my counsel could learn that he was possessed of, which was a horse and buggy. It was sold by the sheriff, and I finally settled by accepting the proceeds of the sale, and the suit was discontinued, as I knew of nothing more that I could get, or would be likely to obtain from him, he not having any attachable property that I could learn of.

Int. 27. What weight did Mr. Brooks's statement that Mr. Shumway was the first inventor of the Lewis tree have upon you, as regards the settlement of that suit?

(Objected to.)

Ans. It affected me with very great suprise, for I had known intimately the whole history of the improvements in patent boot-trees, and I stated to Mr. Brooks that it was one of the greatest falsehoods ever uttered. It had no effect whatever upon my settlement.

Int. 28. Do you recollect the details of the terms of settlement agreed upon between you and Mr. Shumway?

Ans. I was to pay my costs, and he his. I cannot say whether it was settled in full; whether I was to have the privilege of collecting it hereafter or not; but the suit was dropped.

Int. 29. In what court was that suit?

Ans. In the superior court at Worcester.

Int. 30. Do you know anything about the suit of Godfrey in equity *v.* Shumway, began about October, '64, and Howe in equity *v.* Shum- began about the same time?

Ans. I know that there was some suit commenced by Mr. Browne, or Mr. Howe, while I was absent in California. Mr. Howe was then interested in these patents.

Int. 31. What other trees are now in use among boot manufacturers except the Lewis?

134 Ans. No patent tree to any extent. In some places they still use the old wooden tree.

Int. 32. What do you mean by a patent tree?

Ans. A mounted swivelling tree.

Int. 33. You spoke of the iron or Bliss tree; under what patent was that tree made?

Ans. Jarvis Howe's patent.

Int. 34. You say you had litigation with Eames. Was that tree he made built exactly like Lewis's? if not, how different?

Ans. He made a tree including the main improvement of Lewis, the changeable back, but located the slide different, which he claimed to be an improvement on Lewis.

And in answer to cross-interrogatories propounded to him by F. A. Brooks, esq., deponent saith as follows, viz:

Cross-int. 1. (De bene.) Can you fix the time of the interview supposed to have taken place between you and Shumway in your ninth answer, in which you say you made an arrangement for the time when the tariff was agreed upon?

Ans. I know it was not a great while after Eames made the first tree.

Cross-int. 2. (De bene.) Was it not after you had become the owner of the Howe patent?

Ans. No sir. It was prior to that.

Cross-int. 3. (De bene.) Was Mr. Shumway then paying a tariff under the Howe patent to some one else?

Ans. He had been making Bliss trees and paying him, but he was doing nothing just then, as there was little demand. It seems to me that he was not making the trees at that time—my impression is that he had had some disagreement with Bliss. He had been manufacturing them previously. By Bliss tree I mean Howe tree.

Cross-int. 3. (De bene.) So far as you know, was Mr. Shumway to be protected against the liability to tariff under the Howe patent, in entering into this supposed arrangement with you, or released from the payment of the tariff in any way?

Ans. It was not supposed at the time that Lewis's was any
135 infringement upon the Howe patent, it working by inclined planes and the Howe by toggles. Nothing was said or intimated as to Mr. Shumway being protected against payment of tariff.

Cross-int. 5. (De bene.) When, in your last answer, you state what was supposed, you state your own supposition, do you not?

Ans. No; not wholly my own. That of others versed in the construction of the two trees.

Cross-int. 6. (De bene.) Whether or not had Mr. Lewis at that time the right to manufacture his own invention, or was he liable to you for so doing?

Ans. He had not the right by my agreement with him, unless by my consent.

Cros-int. 7. (De bene.) He had sold to you then altogether, had he not?

Ans. He had not.

Cross-int. 8. (De bene.) If he had not sold, why had he not a right to manufacture?

Ans. Because he had agreed to give me the whole business control of the invention, and, I think, to leave me to dictate who should manufacture; and I think I had given my consent to his manufacturing on his own account, if he should desire to do so. I would do anything that was in reason.

Cross-int. 9. (De bene) Did you not consider the manufacture by Shumway and Lewis to be on Lewis's own account?

(Objected to because witness has distinctly testified that he licensed Shumway and Lewis to manufacture.)

Ans. I did not.

Cross-int. 10. (De bene.) You did not have any arrangement with Mr. Shumway alone about a tariff for boot-trees until after the purchase by you of the Howe patent, did you?

Ans. I did.

Cross-int. 11. (De bene.) When and what was this?

Ans. To the best of my recollection, I made the arrangement exclusively with Shumway, without regard to Lewis in the first place. It was an after-consideration, Mr. Lewis going in with Shumway.

The arrangement with Shumway I made before Shumway and
136 Lewis agreed to go into business together. Lewis was then at work treeing boots.

Cross-int. 12. (De bene.) Did Mr. Shumway agree to pay you a tariff on boot-trees before you knew of an arrangement between him and Lewis to manufacture them together?

Ans. He expressed his anxiety to make the goods, and to pay the tariff I might establish for the trees; and expressed his willingness to pay a tariff on the Lewis trees the same as he paid on the Howe trees.

Cross-int. 13. (De bene.) And such an agreement was concluded between you and Shumway. Do you so mean before the partnership of Shumway & Lewis?

Ans. I so understood it.

Cross-int. 14. (De bene.) You have stated that you gave a license to Mr. Shumway alone after buying the Howe patent; such license then referred to the Howe patent, did it not?

Ans. It did not.

Cross-int. 15. (De bene.) Did it refer to any particular patent?

Ans. It referred to my exclusive rights in the mounted swivelling boot-tree, embracing first Lewis's improvement. After my purchase of Upfield's and the Howe patent, it would embrace them. The license was not in writing.

Cross-int. 16. (De bene.) If, as you say, you had already previously licensed Mr. Shumway under the Lewis invention, what occasion had he for another license relating to that invention?

(Objected to because it is a plain misconstruction of the witness's words to assume that the understanding between himself and Shumway, before Lewis and himself had agreed to form partnership, was not waived by the substitution of the license to Lewis & Shumway.)

Ans. Being with Mr. Lewis, and Mr. Lewis having left him, and knowing that Mr. Lewis was interested in one-half of the profits derived from the manufacture of the trees, Mr. Shumway's natural inference might be that Mr. Lewis might want to make the trees exclusively if they separated. After consulting with Mr. Lewis, I agreed that Mr. Shumway could go on and make them for himself.

Cross-int. 17. (De bene.) Was not this second license (as
137 you call it) to Shumway after the separation of Lewis & Shumway, and not before?

Ans. It was about that time; during the litigation and talking.

Cross-int. 18. (De bene.) Do you know that they had not separated previously to that?

Ans. I am not certain. It was about that time.

Cross-int. 19. (De bene.) Had not Mr. Lewis's application for a patent on his alleged improvement been rejected at the Patent Office before the time of this second alleged license to Shumway under that invention?

Ans. His application was never rejected, only some part of hi claim.

Cross-int. 20. (De bene.) Had not all parts of the claims relati·

to the shifting backs, if any, been already rejected or withdrawn at that time?

(Objected to as a matter of record.)

Ans. No; or if withdrawn in any sense of the word, it was only withdrawn for the purpose of amending his claim, so far as I know.

Cross-int. 21. (De bene.) You did not then understand that the Patent Office refused the application of Mr. Lewis, did you?

Ans. No; not entirely.

Cross-int. 22. (De bene.) Were you not informed by Mr. Giles what had been done at the Patent Office at that time?

Ans. I was advised by Mr. Giles that some part of Mr. Lewis's claim was rejected on account of Upfield's patent, which I subsequently purchased.

Cross-int. 23. (De bene.) Do you now swear positively that after knowledge of the rejection, in part at least, of Lewis's claim for invention at the Patent Office, you gave, and Mr. Shumway took, a license under such invention, and agreed to pay the same tariff therein which he had paid under a valid patent previously existing?

Ans. I say that he agreed to pay me a tariff under all arrangements previous to my purchase of the Howe patent and the Upfield patent under the Lewis improvement. I bought those patents only to save myself from litigation with the parties. Mr. Shumway and I never said one word whether it was under the Howe or the Upfield. The whole basis being founded upon Lewis's improvement.

Cross-int. 24. (De bene.) If Mr. Shumway never said a
138 word to you, nor you to him, about which patent was licensed after your purchase of the Howe and the Upfield patents, why do you say, as in the last answer, that the Lewis invention was the sole foundation or basis of such agreement?

Ans. Because it was not only conceded by Shumway himself, but universally by the trade.

Cross-int. 25. Were not the boot-trees got up by Lewis, and made by Lewis & Shumway when together, made with both back and front removable, or moving outward and apart, and different in construction from the boot-tree described in the patent issued in 1858 to Lewis?

(Objected to as matter of record.)

Ans. I know that the model of the Lewis tree and the first tree that Mr. Eames made, was made with the backs and the fronts to slide out. It is my impression. I know that Mr. Lewis and Mr. Shumway made an improvement on the trees or altered them, and made trees with only the back to slide out, which would be different from the model of Lewis. I have not a distinct recollection of the precise time when this alteration was made. It is possible that Mr. Shumway adopted the tree with the back to slide out from the tree made by Mr. Eames.

Cross-int. 26. Is there not the same difference above noticed between Lewis's original model and the tree as described in the patent to Lewis in 1858?

(Objected to as matter of record.)

Ans. Yes; there is just the difference I have described.

Cross-int. 27. And you do not know whether this new construction was copied from Mr. Eames's invention, or how it originated, do you?

Ans. I have no personal knowledge about the matter.

Cross-int. 28. Have you known of any boot-trees like Lewis's original model being manufactured by any one since Lewis and Shumway separated?

(To save time, the attorney for Mr. Howe here admits that no such tree has been made since 1855.)

Ans. I have not.

Cross-int. 29. I understand that you have never received of Mr. Shumway any money which was paid by him on account of the Lewis invention. Am I right?

139 (Objected to because the witness has already testified that Mr. Shumway paid $220 on that account.)

Ans. He has paid me on account of the Lewis invention.

Cross-int. 30. When and how much has he paid you on account of the Lewis invention?

Ans. February 21st, 1856, a note at 4 months, for $220.

Cross-int. 31. Do you say that note was given on account of the Lewis invention?

Ans. It was on account of my first contract with him on the Lewis invention.

Cross-int. 32. And so given two years prior to the grant of any patent on the Lewis invention, was it not?

(Objected to because it is perfectly plain that February, 1856, is at least two years before March, 1858.)

Ans. I don't recollect when Mr. Lewis's patent was granted.

Cross-int. 33. Do you not know that the note bears date before the grant of the patent to Mr. Lewis?

Ans. No, I do not; it is possible it may.

Cross-int. 34. Have you any doubt it does?

Ans. I've no opinion about it; it may or may not. It's as likely to be before as after.

Cross-int. 35. You have no idea, then, when the Lewis patent was granted, have you?

Ans. I know that it was some considerable time after the application.

Cross-int. 36. Did any one else but Mr. Shumway pay or agree to pay you a tariff on the Lewis patent or invention, long after the application of Lewis, and long before the grant of the patent to him?

Ans. Yes.

Cross-int. 37. Till what time did you understand Mr. Shumway to continue to hold a license of any kind from you?

Ans. Till the time I commenced that suit, June, 1862. He was licensed till December 31st, under the original license, and afterwards he was to pay monthly in cash.

Cross-int. 38. Was your alleged license to Shumway ever revoked by you? and if so, when and how?

(Objected to.)

Ans. It was previous to my commencing the suit. I went
140 to him and told him that he must settle and pay me, and he declined. I then told him that I should sue the claim, and stop his making trees.

Cross-int. 39. Did you, for some time after, continue to own the Howe, Upfield, and Lewis patents? and if so, how long?

Ans. I did, until I sold the Howe and Lewis patents to Mr. Howe, by arrangement with Mr. Lewis, a little over two years ago, I think. It was in 1865, in January, that I assigned the Lewis patent. The Howe patent I assigned in 1863. The Upfield patent I still own.

Cross-int. 40. (De bene.) Did not Mr. Shumway, in refusing to pay you a tariff, put his refusal upon the ground that you agreed to prevent other parties from infringing patents licensed to him, and had failed to do so?

Ans. He did in an equivocal way. He remarked that he was to pay in cash, and that he was short, and business was dull, and that he would pay very soon.

Cross-int. 41. From 1856 to 1862 you did not attempt to collect any tariff from Mr. Shumway, did you, by law?

Ans. I did not by law.

Cross-int. 42. Did you ever attempt to collect more than one tariff of Mr. Shumway on account of any and all patent titles which you possessed at any time; I mean more than a single tariff on all the patents?

Ans. I never attempted to collect otherwise than under the first arrangement. That applies to my original contract.

Cross-int. 43. Did you ever claim a separate tariff under each patent or either of them?

Ans. I never did.

Cross-int. 44. Did you ever succeed in compelling Mr. Eames to pay you a tariff, on which payment by Eames Mr. Shumway agreed to pay you a tariff, as you say?

Ans. The suit against Eames for that purpose was not sustained.

BENJAMIN D. GODFREY.

141 Deposition of Willard Jones, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 6TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans Willard Jones; age, 41 years; residence, Worcester, Mass.; occupation, iron founder.

Int. 2. How long have you been an iron founder, and where?

Ans. About twenty-one years, in Worcester most of the time.

Int. 3. Have you ever made castings for boot-trees? If so, when first, and for whom?

Ans. I have. The first we made for Mr. Howe. That was some time ago; I should think some fifteen or sixteen years ago.

Int. 4. Have you ever made castings for Mr. Shumway, of Worcester? If so, when, and what were the castings?

Ans. I have. It was in '64. I don't know exactly the date. I should think in the latter part of the spring or fore part of the summer; they were boot-tree castings, the main casting to support the back and front.

Int. 5. Did Mr. Shumway bring his patterns from which to mould? If so, state whether those patterns were new ones or whether they had been used before, and how many he brought.

Ans. He did; there were three in the whole. I couldn't say whether all were brought at one time or not. I should think they were new by the looks.

Int. 6. What marks, if any, did you see upon them of former use?

Ans. I couldn't say that they had any.

Int. 7. How do you take a pattern out of the sand in making a mould?

Ans. With a draw nail or screw, which draw nails we drive into the pattern, and the screw we screw into it; lift the pattern out of the sand, and remove the nail or screw.

Int. 8. This, of course, leaves a mark on the pattern, does it not?

Ans. Yes, sir, always.

142 Int. 9. Look at pattern now shown you, marked "Lewis No. 2, E. B. S.," and "Lewis No. 4, N. A. P.," and state what they are, and whether they have been much or little used.

Ans. They are boot-tree patterns. They have been used considerable. I judge by the draw holes in the pattern where the draw nails have been put in.

Int. 10. How do those patterns compare generally with the patterns brought you by Shumway?

Ans. I should think they were like them or very nearly so, as nearly as memory serves me.

Int. 11. Please compare these patterns with the centre castings of the boot-trees now shown you, marked "Leland, N. A. P.," and "Howe, N. A. P.," making careful measurements, and state whether or not the castings in those trees were made from those patterns?

(Objected to because asking for witness judgment and not for facts. Question withdrawn for the present.)

Int. 12. What experience have you had in moulding and casting? State generally.

Ans. I've had twenty-one years' experience. I've worked at the business all the time, and melting and moulding for the past eighteen years, and had charge of the shop part of the time.

Int. 13. Now please answer the 11th question.

(Objected to as before.)

Ans. They were made from those patterns unless there were some made exactly like them.

Int. 14. Now take the pattern "Lewis No. 2," and compare it with the centre-piece of "Leland, N. A. P.," and point out in detail every difference you find, except that arising from the necessary shrinkage of the iron and finish of the casting.

Ans. All the difference that I can see in it is in the shrinkage.

Int. 15. Look at that part of the casting where the upper part of the side brass goes on, and compare that with the pattern.

(Objected to as irrelevant.)

Ans. That casting was made previous to a piece put on to the upper part of the cheek piece, or side piece, which was put on since. I refer to a piece about $\frac{3}{4}$ by $\frac{1}{2}$ inch, on that part of the pattern
143 where the upper parts of the brasses are meant to go. It is the same on both sides.

(Objected to as before.)

Int. 16. Now look at the ears which hold lock mechanism, and compare them with the ears on the pattern.

(Objected to as before.)

Ans. They don't compare exactly, because they have been finished down a good deal. Those on the pattern are the largest.

Int. 17. Now compare the space left in the lower part of the pattern below the ears, with the same space in the casting, and if you find a difference state whether you find any marks of alteration in the pattern to account for that difference.

(Objected to as before.)

Ans. I do find a difference. I find marks in the pattern of alterations to account for it.

The difference is from $\frac{1}{8}$ to , as near as I can measure. The marks of the alterations are visible in the pattern where the part has been cut away.

Int. 18. Do you find any of those marks of alterations in the pattern "Lewis No. 4" upon comparing it with the casting of tree marked "Howe, N. A. P.?"

(Objected to as before.)

Ans. I don't see but what they compare. There has been no alteration since the casting was made. The pattern "Lewis No. 4" had been altered before by having a piece like that before referred to put upon the side. I don't see any other alteration in this pattern.

Int. 19. Have the trees that you have examined had the back and front both renewed?

Ans. Yes, sir.

Int. 20. Please compare the tree marked "No. 1, C. H. T., G. D. N.," with the pattern marked "Lewis No. 2, E. B. S.," and state from what pattern the casting of that tree was made.

(Objected to because the question involves mere matter of opinion in regard to a subject as to which no experience is proved to exist or in fact can exist; that is, as calling for mere matter of conjecture.)

Ans. I should say it was made from this pattern or one like it. There is an alteration in the pattern, a piece being put on to the standard since the casting was made, and a piece also put on to the cheek piece (the same piece referred to before where the upper part of the brass goes on) since this casting was made. The space below the ears has been altered since the casting was made.

144 Int. 21. Are you able to compare the front part of the casting "No. 1, C. H. T., G. D. N.," with the front part of the pattern, and if not, why not?

(Objected to as before.)

Ans. I can't, on account of the wood over the front of the casting.

(Attorney for Mr. Howe here requests the attorney for Mr. Newton to allow the front part of Exhibit "No. 1, C. H. T., G. D. N.," to be removed by Mr. Howe, under the supervision of Mr. Newton, Mr. Shumway, or himself, or upon other terms which to him may seem fit, in order that these and the other witnesses on this point may be able to make a thorough comparison between the pattern and that casting.)

(Counsel for Mr. Newton, not perceiving the relevancy of the inquiry contemplated by that question, or the competency of the witness to testify on matters to which the interrogatories relate, does not consent to protract the examination by taking the exhibits to pieces.)

Int. 22. Please look at exhibit now shown you marked "Bradish, T. G. Kent, notary public," and state from what pattern the centre-piece of that tree was cast.

(Objected to as before.)

Ans. The pattern isn't here that this was made from. I couldn't state from what pattern it was cast.

Int. 23. As far as your memory serves you, how does the casting in that boot-tree compare with or differ from the pattern brought to you by Mr. Shumway in the spring or summer of 1864?

(Objected to as before.)

Ans. We made some castings similar to this. Why I recollect is. there was a groove here for the brass down the whole length of the brass. I mean where the brass set into the cast iron.

Int. 24. Please compare the casting of that tree with the casting of that marked "Youths', G. D. N.," and point out any differences whatever which you may find.

(Objected to as before.)

Ans. I can't see any difference in the two; nothing more than what there would be in finishing.

Int. 25. You say you received those patterns from Mr. Shumway in the spring or summer of '64. Please state the sizes of those pattern, as near as your memory serves you.

(Objected to as before.)

145 Ans. I should say there were three different sizes, a man's, youth's, and boy's.

Int. 26. How did they compare in size with "Lewis No. 4?"

(Objected to as before.)

Ans. I should think one was similar in size, one considerably larger. I am not confident whether the one similar to "Lewis No. 4" was the smallest or not.

(Attorney for defendant declines to cross-examine.)

WILLARD JONES.

Deposition of H. H. Houghton, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 6TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. H. H. Houghton; age, 39; residence, Worcester, Mass.; occupation, machinist.

Int. 2. In the years 1854 and 1855 did you have the control of the building in Worcester, on Washington street, then known as the Washington street machine shop? and if so, did you let rooms in that building to Messrs. Shumway & Lewis at that time?

Ans. Our firm, Thayer, Houghton & Co., had. Mr. Shumway commenced to occupy rooms with us on the 1st of January, 1855.

Int. 3. How do you fix this date?

Ans. From our books.

Int. 4. Does your account stand with Shumway alone or with Shumway & Lewis?

Ans. With E. L. Shumway.

Int. 5. Who occupied the rooms before January 1st, 1855?

Ans. We were burned out in the great fire, June, 1854. This shop had been idle a number of years before. A large portion of the balance of that year was used in fitting it up; putting in new engines, &c.

146 Int. 6. When did Shumway begin to occupy that shop in fact?

Ans. The first account we have is 1st January, 1855. I couldn't go safely back of that date.

Int. 7. Previous to that, had Mr. Shumway at any time ever occupied a shop in that building?

Ans. Not to my knowledge.

Int. 8. How far back does your knowledge extend as to the occupants of that building?

Ans. I couldn't state with certainty. I have known the occupants of the building since it was first put up.

Int. 9. You say, "not to my knowledge." You know, sir, I suppose, who were the occupants of that building from the time it was built. Now please tell us whether Mr. Shumway really occupied a shop in the building or not, before the 1st of January, 1855, or thereabouts.

(Objected to as already answered.)

Ans. I never knew of it. He might have had rooms there for a week or two.

Int. 10. Don't you know whether he did or not?

Ans. I don't think he did.

(Attorney for complainant declines to cross-examine.)

H. H. HOUGHTON.

Deposition of Frederick Smith, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 10TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Frederick Smith; age, 28; residence, Milford, Mass.; occupation, boot-tree manufacturer.

Int. 2. How long have you been employed in the manufacture of boot-trees?

Ans. Since April, 1863.

Int. 3. For whom do you work?

Ans. For Jarvis Howe.

147 Int. 4. Have you also repaired boot-trees? If so, for how long time and whose make?

Ans. I have since I have worked for Mr. Howe, since 1863, a number of different kinds; some of Mr. Shumway's, some of Mr. Howe's, and some of Mr. Lewis's, and of Mr. Eames's and others.

Int. 5. Did you ever work with Mr. Shumway? If so, when, where, and for whom?

Ans. I have worked with him at Worcester, in November, 1863, for Mr. Howe?

Int. 6. For whom, and on what work did Mr. Shumway work at that time?

Ans. For Mr. Howe, on boot-trees.

Int. 7. What kind of trees did Mr. Howe then make in Worcester, like those he manufactured at Milford, or how otherwise? I mean in style.

Ans. They were not like those he made at Milford. They were, most of them, made with two inclines. Those in Milford were made with one.

Int. 8. How many of Shumway's trees have you seen or worked on during your connection with the boot-tree business, as near as you can state?

Ans. I should judge from 800 to 1,000.

Int. 9. How did the trees Howe made at Worcester compare with Shumway's?

Ans. The trees that I worked on at Worcester were of three different patterns. They were made with two inclines, the same as his. The castings were very nearly the same thing.

Int. 10. What difference, if any, do you know of in the castings?

Ans. I don't know of any difference.

Int. 11. Please look at exhibit now shown you, marked, "Bradish, T. G. Kent, notary public," and state when you first saw a youth's tree of Shumway's make with that style of casting.

Ans. This is the first one I ever saw, and I first saw that to-day.

FREDERICK SMITH.

(Counsel for defendant declines to cross-examine.)

148 Deposition of Charles K. Dorman, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 12, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. Charles K. Dorman; age, 36; residence, Providence, R. I.; occupation, caterer.

Int. 2. Do you know E. L. Shumway? If so, when did you first know him, and where was he then at work?

Ans. I do. I knew him first in Worcester, I should think some

time in 1848. He was then at work making patterns for boot-trees in Court Mill, Worcester.

Int. 3. Did you and he then work in the some room? and if so, for whom were you at work?

Ans. We did; we were at work for Mr. William R. Bliss.

Int. 4. Is Mr. William R. Bliss now living?

Ans. He is not.

Int. 5. What kind of boot-trees were you then making?

Ans. The Howe tree.

Int. 6. What part of the work did you do? and what was your trade then?

Ans. I did the iron work. I was a machinist.

Int. 7. How long after 1848 were you at Court Mill, and what part of the time was Mr. Shumway there with you?

Ans. I don't recollect just how long I was there, but it was till we moved to Merrifield's building. I should think it was in the neighborhood of a year; wouldn't be positive as to the time. Mr. Shumway was there all the time.

Int. 8. In whose shop, in Court Mill, did Mr. Bliss carry on his boot-tree manufacture?

Ans. It was his own shop; he bought out a firm, B. H. Goodale.

Int. 9. What work did you do after you moved to Merrifield's building, and for whom?

Ans. I worked on boot-trees for Mr. Bliss, and also for Mr. Shumway; and on sewing machines for Hood, Battell & Co.

Int. 10. Where did Mr. Shumway work then, and at what?

149 Ans. In Merrifield's building, on boot-trees.

Int. 11. How long did you remain in Merrifield's building?

Ans. Up to the time of the fire.

Int. 12. How many rooms did Mr. Bliss occupy in Merrifield's building; I mean during all the time you were there?

Ans. Only two, to my knowledge.

Int. 13. What business did he carry on in those rooms?

Ans. He manufactured sewing machines in one room, and boot-trees in the other.

Int. 14. Did you and Mr. Shumway work in the same room during any part of this time? If so, about which part?

Ans. We did. The first of my going there I worked on sewing machines, the last of my being there was on boot-trees in the same room with Mr. Shumway.

Int. 15. During all that time, how frequently were you in the habit of seeing Mr. Shumway, and on what terms were you?

Ans. I used to see him quite early in the morning, and as late as 6 o'clock at night, usually. We were on good terms.

Int. 16. Did Mr. George W. Bliss have rooms in Merrifield's building during any part of this time? If so, how many?

Ans. He did; a portion of the third and a portion of the fourth floor. I couldn't say how many rooms.

Int. 17. What kind of boot-trees were manufactured in that building during that time?

Ans. The old iron, or Howe tree?

Int. 18. For whom did you work just previous to the fire?

Ans. For William R. Bliss, I think.

Int. 19. Was Mr. Shumway then working on boot-trees? If not, what was he doing, if you know?

Ans. I think he was not at work on boot-trees just previous to the fire. I am not positive.

Int. 20. Was Mr. Shumway ever a member of the firm, to your knowledge, which manufactured trees in Merrifield's building?

Ans. I can't say positive with regard to that.

Int. 21. After the fire, where did you work, and what did you do up to January, 1855?

Ans. I worked on boot-trees in Manchester street.

150 Int. What kind of trees?

Ans. The Howe patent.

Int. 23. When did you first see or hear of a changeable back tree, and from whom?

Ans. I can't recollect when it was. It was after or during the time that I worked in Manchester street. I heard of them from Mr. Lewis.

Int. 24. While you were in Merrifield's building, did Mr. Shumway make any other trees than the Howe tree? If so, what kind?

Ans. He did not.

Int. 25. Was he engaged during the whole of that time in the manufacture of trees? If so, what kind?

Ans. He was, in manufacture of the Howe tree.

Int. 26. Was any other tree than the Howe tree manufactured in Merrifield's building during that time? if so, what kind?

Ans. There was not, to my knowledge.

Int. 27. Did you ever see any other kind of tree in Merrifield's building during that time?

Ans. Yes. The old wood tree or slide tree.

Int. 28. Were trees repaired in that building during that time? If so, what kind of trees did they have to be repaired?

Ans. They were. The Howe tree, and, I think the old slide tree.

Int. 29. Up to the time of the fire did you know of Shumway's ever having made any other tree than the Howe tree, or did you ever hear him speak of having made any other tree? If so, what kind, and what did he say?

(Objected to as immaterial.)

Ans. I never did.

Int. 30. Up to 1855 what kinds of trees were in use, so far as you know?

Ans. The Howe tree and slide tree.

Int. 31. Do you know anything about an attempt to introduce another kind of a tree? If so, please state.

Ans. I do not.

Int. 32. Did you ever hear of Sampson's tree?

Ans. I have, but the dates I am not positive of. It might have been before or after '55.

151 Int. 33. Did you ever hear Mr. Shumway speak of any other tree than the Howe tree and the old slide tree up to the time of the fire? If so, what tree was it, and what did he say?

Ans. I don't remember hearing him speak of any other tree than *than* those two.

Int. 34. Did anybody else manufacture machine trees, to your knowledge, up to the time of the fire?

Ans. I don't remember as they did.

Int. 35. Up to the time of the fire had Mr. Shumway ever told you that he had ever seen, made, or heard of a changeable back tree, or did he ever intimate anything of that kind to you?

Ans. He never did.

Int. 36. Did you ever work on changeable back trees? If so, where, and for whom, and when?

Ans. I have; on Washington street, Worcester; for Shumway and Lewis. I can't tell the year.

37. What kind of trees did you make when you first went there?

Ans. If I recollect right we made both kinds at first, the Howe tree, and the adjustable back tree.

Int. 38. How did these adjustable back trees differ from the ones which have since been used, if at all?

Ans. The first that were made were so that only half of the leg could be taken off, leaving the front part stationary. After that they were made so that both front and back took off.

Int. 39. How many inclines had the tree in which the front and back both moved?

Ans. Four.

Int. 40. How positive are you that you made any tree with two inclines while you worked for Shumway & Lewis?

Ans. My impression is we did, but I am not positive about it.

Int. 41. After you commenced work for Shumway & Lewis did you ever hear Shumway say that he, or any one else, had made, seen, or heard of a changeable back tree before Mr. Lewis, or did he ever intimate anything of that kind?

Ans. I never did.

Int. 42. So far as you know, what was Mr. Shumway's opinion then as to the value and novelty of that feature of a boot tree?

152 Ans. My impression is he didn't think very favorably of the Lewis tree.

Int. 43. What were his reasons, if you know?

Ans. I couldn't tell.

Int. 44. Can you state the substance of anything he said which gave you the impression you have above spoken of?

Ans. I should think I heard him say that they was easy to get out of repair, and not so durable as the Howe tree.

Int. 45. Did you ever hear him say anything about the complaints that boot-treers or manufacturers made of the Lewis tree?

Ans. I should think I had, but I couldn't state what he said.

Counsel for respondent declines to cross-examine.

C. K. DORMAN.

Deposition of Octave Beauvias, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 13TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Octave Beauvais; age, 31 years; residence, Worcester, Mass.; occupation, machinist.

Int. 2. Have you ever worked for Mr. E. L. Shumway? If so, when first?

Ans. I have. I first worked for him in 1856.

Int. 3. How long did you work there at that time?

Ans. Somewhere about a year.

Int. 4. Who worked there with you, and who was working there when you left?

Ans. Kenny worked there with me, and was there when I left.

Int. 5. When did you next work for Mr. Shumway?

Ans. Some time before Mr. Howe bought him out—the fall before.

Int. 6. How long did you work with him then?

Ans. Until last fall.

153 Int. 7. Did you work for Mr. Howe when he was there?

Ans. I did.

Int. 8. Before Mr. Howe brought Shumway out, what style of centre piece castings did Shumway use in his trees? Like the ones he now uses or different from them?

Ans. Different.

Int. 9. Look at these patterns, (counsel refers to patterns marked Lewis No. 1, 2, 3, and 4, respectively,) and state whether the centre-piece castings which Mr. Shumway used in his trees before Mr. Howe bought him out were like them or not?

(Objected to as leading.)

Ans. They were like this pattern. That's what we used. (Pattern pointed out by witness is marked "Lewis No. 2.")

Int. 10. The pattern you referred to is a boy's pattern. What pattern did he use for his other sizes of trees, and how did they compare with the other three patterns, "Lewis 1, 3, and 4?"

Ans. They were like those—some like "No. 1;" some like "No. 3."

Int. 11. After Mr. Howe left Worcester, who did you work for?

Ans. For Mr. Shumway.

Int. 12. What patterns of centre-piece casting did Mr. Shumway use then?

Ans. Some like Lewis's exhibits and some like that of "Bradish, T. G. Kent."

Int. 13. Where did he get the centre-piece castings like these patterns? (the Lewis's exhibits.)

Ans. In different places. Brittan cast some, and a man in Milbury; I don't recollect the name of the firm. He used to get some there. Jones & Earle I think made some.

Int. 14. After Mr. Howe left Worcester, where did he get the centre-piece castings which he used; which were like the patterns? (Lewis's exhibits.)

Ans. He didn't get any of them after Mr. Howe left.

Int. 15. How many trees has Mr. Shumway made, as near as you recollect, from the time Mr. Howe left?

(Objected to as immaterial.)

Ans. About two a week.

Int. 16. Were the centre-piece castings in those trees all of
154 the same style as the casting in the tree before you, marked "Bradish T. G. Kent?" If not, about how many of them had a different style of centre-piece casting?

(Objected to as immaterial.)

Ans. There were some like Lewis exhibits, about five or six, that Mr. Howe let.

Int. 17. Did Mr. Newton, of Westboro', come to Mr. Shumway's shop somewhere in the spring or summer of 1865? If so, what did he come for, if you know?

(Objected to as leading.)

Ans. He was there some time; several times about that time. He came to have repair work done, and ordered some trees, or spoke about ordering trees, about having what they called "second-handed trees," tree made like that exhibit Bradish, T. G. Kent. I made the tree myself for Newton; that is, the iron work of it, made of the new casting.

Int. 18. Please state just what you did on that tree, and what old stock you used, if any?

Ans. I made the iron part; all of it, or put it together. It was all new.

Int. 19. Who did the wood work?

Ans. Mr. Shumway.

Int. 20. Did you see the tree after it was made? If so, what part of it was old, if any?

Ans. I did; there was no old part in it.

Int. 21. While you were at work on that tree, did Mr. Newton come there? If so, please state what, if anything, he said about it?

(Objected to.)

Ans. He was up there several times, but I don't know whether I could tell you if before or after. We had conversations about sending the tree home. I couldn't tell you what he said. All I know the tree was made there; made new, and I worked on it. He came up once, and asked when the tree would be ready. I don't know whether Mr. Shumway carried it up to him, or whether it went by express—two trees, a boy's and youth's, or infant's and youth's, I couldn't say which.

Int. 22. Is the tree now before you, Exhibit Bradish, in your opinion, a new tree or an old tree?

(Objected to as immaterial and as not asking for facts)

155 Ans. A new tree.

Int. 23. Is that the kind of tree that they called "second-handed trees" in Mr. Shumway's shop? If not, how does it differ?

(Objected to as immaterial and as asking for matters of opinion.)

Ans. It is the same kind. That's what he told me to call it several times.

(Answer objected to as irresponsive and immaterial and hearsay.)

Int. 24. Look at the bill of sale now shown you from Mr. Shumway to yourself; state who gave it to you, and what reason, if any, he expressed for giving it to you.

(Objected to as immaterial.)

Ans. Mr. Shumway gave it to me. He said he was afraid to have trouble with Mr. Howe. It is marked Exhibit Beauvais.

Int. 25. Who worked with you for Shumway after Mr. Howe left?

Ans. No one but me.

Int. 26. Did any other man come to work there before you left? If so, who was he?

(Objected to as immaterial.)

Ans. Not till after I had quit a little time. It was a young man; I don't know his name now. I may by and by. I thought the question referred to the first time I left; if you mean the last time, Mr. Kinney came before I left.

Int. 27. Of what country are you a native?

Ans. Of Canada East.

Adjourned to 24th inst., at 10 a. m.

Cross-examination by F. A. Brooks, esq.:

SEPT. 24TH, 1866.

Cross-int. 1. When did you leave Shumway's employ last?

Ans. Last fall.

Cross-int. 2. What time last fall?

Ans. Some time in October.

Cross-int. 3. How long had you then been with Shumway?

Ans. I don't exactly recollect; about six weeks I think.

Cross-int. 4. Before last working for Shumway, where were you employed?

156 Ans. For Mr. Brown, in Worcester; the mowing-machine company.

Cross-int. 5. How long had you worked for the mowing-machine company?

Ans. Five or six months. No, I will take that back; I don't think it was five or six months; I think it was about three months.

Cross-int. 6. Can't you tell whether it was six months or three months?

Ans. It was between three and six months.

Cross-int. 7. Have you had difficulty with Mr. Shumway, and are you unfriendly to him?

Ans. Oh, I'm friendly. No difficulty, more than that when I left him he should settle up with me.

Cross-int. 8. Did he owe you anything which he refused to pay?

Ans. I thought that he should pay me more—that he hadn't paid me what was right—but that hasn't anything to do with this case; that's all settled up.

Cross-int. 9. Do you now say that Mr. Shumway owed you any wages, and that you could not get the same of him when you left him?

Ans. There was nine dollars and a half, I think, that I wanted to get, but I couldn't prove that he was obliged to give me that.

Cross-int. 10. Did he owe you that sum as wages and refused to pay you?

(Objected to.)

Ans. I thought he did from what he said.

Cross-int. 11. Did you sue him, and did you not find that he didn't owe you anything?

Ans. I did sue him, and did find so, or it was left undecided, as near as I can tell. I don't know anything about law, my lawyer can tell you.

Cross int. 12. Have you been friendly to him since sueing him for wages which were not recovered or found due you?

Ans. I like him well enough, but finally thought that I should get it; I wasn't satisfied.

Cross-int. 13. Have you been subject to derangement of mind?

Ans. Never; not since I left the hospital.

157 Cross-int. 14. Were you an inmate of a lunatic hospital, and when did you leave it?

Ans. I was. I left it seven years ago this summer, I think, August 29th.

Cross-int. 15. Is your memory good, or has it been injured by disease or otherwise?

Ans. What I tell you here ought to prove that. I will tell you that it is good, you can't prove otherwise. I don't care who says so.

Cross-int. 16. Do you keep any diary, or have any means of fixing dates except memory?

Ans. I did keep a book, and do now; always have, I mean a time book.

Cross-int. 17. What does that book show?

Ans. The days I work right along.

Cross-int. 18. Where is that book, will you produce it?

Ans. It is in my coat pocket at the house. I will fetch it and show to you, but not to-day.

Cross-int. 19. Do you know Otis Newton?

Ans. I think I would if I should see him.

Cross-int. 20. When and where did you ever see him, and how do you know that you ever saw him?

Ans. In Mr. Shumway's shop, while I was at work for him, I first saw him. I know he came to Shumway's shop last summer; I know him by hearing Shumway tell his name.

Cross-int. 21. When and where did you last see him?

Ans. In Mr. Shumway's shop, the last time I worked for Mr. Shumway.

Cross-int. 22. Did you ever see him before the last time you worked for Shumway?

Ans. I did, several times.

Cross-int 23. Did he, Newton, ever speak to you, or you to him?

Ans. He did. He spoke to me, and I spoke to him.

Cross-int. 24. When was this, and what was said?

Ans. It was some time when I worked for Mr. Shumway. I don't mean the last time I worked for him—them six weeks.
158 He might and he might not. I don't recollect what he did say when he spoke to me.

Cross-int. 25. Will you swear he spoke to you at all?

Ans. I can't tell.

(Counsel for complainant requests the examiner to explain the question especially as to the time to which the inquiry relates. Counsel for defendant objects, the witness having already answered the question, and for the reason that he has been prompted by complainants' counsel.)

The examiner asked the witness—

"Will you swear that he spoke to you at any time?" and witness answers—

Ans. He did, when I worked for Mr. Shumway before—not that last time.

Cross-int. 26. What did he say to you?

Ans. I don't recollect.

Cross-int. 27. Did you work for Shumway from the time Howe bought him out till the last fall?

Ans. Not all the time.

Cross int. 28. When did Howe buy out Shumway.

Ans. Some time in the winter of '65.

Cross-int. 29. How do you know this?

Ans. As near as I can recollect.

Cross-int. 30. You stated in your fourteenth direct answer that Mr. Shumway didn't get any centre-piece castings like pattern "Lewis exhibits" after Howe left. That is correct, is it?

Ans. I don't understand that at all.

Cross-int. 31. Did Mr. Shumway get any centre-piece castings like exhibits "Lewis" after Howe left?

Ans. I think Mr. Shumway did get some.

Cross-int. 32 You were not then correct in your answer to the fourteenth direct interrogatory, were you?

Ans. He did get some like those.

Cross-int. 33. Why did you state differently on direct examination?

Ans. I didn't know any better; am liable to make a mistake sometimes. I didn't recollect. What wasn't right I will make
159 right this time. If I didn't say enough, I will say more now. I mean to tell it all.

Cross-int. 34. When did Mr. Howe leave Mr. Shumway's place at Worcester?

Ans. You can take the answer from them. I don't want to tell the things a second time. If I must I tell it again. It was some time last year—was it not so? I will reflect there a little, whether I'm right or not. A year ago this fall I left Mr. Shumway. Mr. Howe bought it some time before that—in the same year, I think. It was last year some time that Mr. Howe left.

Cross-int. 35. What time last year was it that Howe left?

Ans. In the winter, in February, if I understand right.

Cross-int. 36. Did not Mr. Howe take all Shumway's stock on hand when he bought him out?

Ans. No.

Cross-int. 37. What did he not take?

Ans. Mr. Howe bought it all, and Mr. Shumway bought back some of it. You needn't put down that Mr. Howe bought it all, that was a mistake. He couldn't buy it when he had it, could he?

Cross-int. 38. In your 5th direct answer you stated that Mr. Howe bought out Mr. Shumway while you was working for Shumway. Did not Howe buy him out, and what did he not buy, if anything?

Ans. I think he did buy him out. There were some castings left, whether he bought them or not I don't know.

Cross-int. 39. What were those castings, and what was done with them, and how many were there?

Ans. Boys' and youths'. Six of them. They were made up in trees.

Cross-int. 40. Into what trees were they made, and when, and what was done with the trees so made, and who had them, or any of them?

Ans. Some into infant trees, and some went just as the pattern was at the time—they were made up some time after Mr. Howe dissolved. The trees were sent up somewhere. I don't know where. I don't recollect who had 'em. I couldn't remember.

Cross-int. 41. Mr. Newton didn't have any of them, did he?

Ans. Not at that time. I don't think he did.

Cross-int. 42. Did he at any time?

160 Ans. I think he did some time the last time I worked for Mr. Shumway, the last summer or fall. I couldn't tell which.

Cross-int. 43. You said in the 40th cross-answer you couldn't recollect, and didn't recollect what became of any of those trees. Why, then, do you say that you think Newton had some of them?

(Objected to because witness has not said that Newton had any of those trees made from those particular castings.)

Ans. I did think so, and I think so now, that he had some about that time?

Cross-int. 44. How long did you work for Howe at Shumway's place in Worcester, and when did you cease working for him?

Ans. About a year, I think. I left a year ago this fall—no, winter. A year ago last winter.

Cross-int. 45. Did the centre-piece castings, not taken by Howe,

remain in the shop all the time Howe was there, and were they left there by Howe when he quit Worcester?

Ans. The whole six was left there by Howe. They was in the shop there while Howe was there; were brought in while Howe was working; were cast during the time when Howe was then in the shop.

Cross-int. 46. If they were cast during the time Howe was in Shumway's shop, it is not true that they were part of the stock of Shumway which Howe did not take of Shumway, is it? Which of these is the fact?

Ans. I don't exactly remember when they were cast, only that it was while Mr. Howe was there; whether he was present I can't say.

Cross-int. 47. Were the boot trees which Newton ordered, as you say, called "second-hand trees" at the time of the order?

Ans. I didn't hear the conversation. I heard no conversation about it, except there was conversation about—I don't know if at the time, repairing a tree. I know there was some tree made there for him called a "second-handed tree," and went off. That's what Mr. Shumway called it, a "second-handed tree," and that's what customers used to call them.

Cross-int. 48. If customers came for second-hand trees, and the trees were called second-hand trees by Mr. Shumway, were they not second-hand trees that he dealt in?

Ans. I believe they were not, sir.

161 Cross-int. 49. Why were they called second hand by customers and by Shumway, if not so in fact?

Ans. Because they wasn't built like second-handed trees—wasn't made.

Cross-int. 50. What was the price or prices paid for these trees, do you know?

Ans. Twenty dollars, some fifty, and some thirty-five.

Cross-int. 51. And these trees were not second-hand; do you so swear?

Ans. I have sworn they wasn't; I swear it now; tell better if I see the tree, though.

Cross-int. 52. Is not $20 or $35 less than a new boot-tree would cost to make?

Ans. I know nothing about the cost of a boot tree.

Cross-int. 53. Are you capable of judging whether boot-trees like Shumway's could be made and sold at $20 without loss?

Ans. I don't hardly think they can be made as cheap as that.

Cross-int. 54. Didn't Shumway have many second-hand trees, and sell such while you worked for him?

Ans. Yes, sir, quite many.

Cross-int. 55. State all persons who bought trees of Shumway, not second-hand, while you were there.

Ans. Mr. Newton was one, Fairbanks in Medway was one other, and quite a number others; I don't recollect their names; they bought it as second-handed, if you understand it.

Cross-int. 56. Did they not also pay for them as second-hand boot-trees?

Ans. I do not know anything about that.

Cross-int. 57. Am I right in supposing that the boot-trees bought by Newton was made from a casting made by or for Mr. Howe while he was in Shumway's shop at work, as you say?

Ans. I think they were not.

Cross-int. 58. You have sworn that you made the youth's boot-tree bought by Newton, and ordered for him in 1865; is this true?

Ans. I don't recollect the date; I say as I said the other day, they were made the same pattern as this tree here, (Bradish, T. G.,
162 Kent, notary public;) they were made the last time I worked for him.

Cross-int. 59. Did you ever make boot-trees which Newton had more than once?

Ans. I made the two; I recollect making the two for him.

Cross-int. 60. Do you mean that you made two at the same time, and new, for Mr. Newton?

Ans. We made them during that time; I can't tell if we made 'em the same day; I think they were new; they was made, everything new, same as that one, (Bradish, T. G. Kent.)

Cross-int. 61. Do you swear that the two boot-trees sold to Newton last year were entirely new, and had not before been used by any one?

Ans. I do.

Cross-int. 62. If they were new trees, were they not both worth over $50?

(Objected to because it does not appear what the cost of the two trees witness refers to was.)

Ans. I don't know anything about the cost of the trees; they were worth that if they were worth anything; it ought to be worth fifty dollars; I should think they would be worth more than that for new trees.

Cross-int. 63. Look at boot-tree now shown you, marked "Youth's, G. D. N.," and state if you ever saw it before.

Ans. It was made in Mr. Shumway's shop, I think, but I don't know who had it; couldn't tell you that; I think it was a new tree once, what we call a new second-hand tree; I rather think I made a part of it, but I don't know as it is Mr. Newton's tree or not; shouldn't be at all surprised, though, if it was one of 'em Mr. Newton had.

Cross-int. 64. Did not Mr. Shumway have some second-hand trees of Furbush & Wheeler, of Grafton?

Ans. He did, sir.

Cross-int. 65. What became of those trees?

Ans. They were sold there, fixed, and repaired in the shop, but I don't know who had 'em; Mr. Newton might have had some of 'em, but I don't recollect; can't tell anything about it.

163 Cross-int. 66. Might not the tree marked "Youth's," be one of those trees got of Furbush & Wheeler?

Ans. It might be; he got some second-hand trees from Mr. Shumway, but he did get two new ones; you can't rub that out.

Cross-int. 67. Do you consider trees that Mr. Shumway bought back of others, and had repaired and varnished for sale again, to be new trees or second-hand trees?

Ans. Second-hand.

Cross-int. 68. By whom were the castings of trees, sold Newton in 1865, made, or where did they come from?

Ans. I think they were made in Millbury; if not there, were made to Brittan or to Wheeler or Jones; I can't tell the man's name; they were cast somewhere.

Cross-int. 65. Are you not entirely ignorant when they were made and where?

Ans. I don't believe I be; I think, as I said before, they were cast down in Millbury; they were cast somewhere, as I said before.

Cross-int. 70. Have you any knowledge or recollection except that they were cast somewhere? If so, what?

Ans. As I said the other day, and say to-day, they were cast in those places, as near as I can remember.

Cross-int. 71. Do you remember yourself making new boot-trees in 1865 for anybody besides Newton? If so, for whom?

Ans. I do, for Mr. Shumway; I worked with him then, and made them for him.

Cross-int. 72. I mean for any other customer than Newton.

Ans. Certainly, but not make it entirely myself; Mr. Shumway finished it, and I made the iron work.

Cross-int. 73. What other customer?

Ans. I don't recollect, I tell you a while ago, except Rawson and Grinnell had some; I can't recollect whether they were new trees or not; I can't tell you.

Cross-int. 74. You can't recollect any work by you on new trees except on those which Newton had, can you?

Ans. I might if I see it; if I see the trees that I been to work on, I can tell well enough; I don't know as I could recollect.

164 Cross-int. 75. Where, and for whom, were you at work in June, 1865?

Ans. For Mr. Shumway, or if not there, for Mr. Browne.

Cross-int. 76. You can't now tell for which you then worked, can you?

Ans. I could if I had my book; I rather think I was working for Mr. Shumway; if I was not, I went there some time the last of June, I think; that I'm positive; perhaps I was at work there before that time; I was to work there at that time; I will state different from that, if you will take it back; Mr. Shumway went out to spend the 4th of July, and I quit some time before that, and he got back, and I went to work for him again.

Cross-int. 77. Did you not work for Crompton in 1865, and when?

Ans. I did one week, the week Mr. Shumway was away, in July, '65; that is, I didn't work one week; I worked three days and a half.

Cross-int. 78. Did you also work for your brother last year?

Ans. I did.

Cross-int. 79. Did Newton have more than two boot-trees of Shumway in 1865, while you were there?

Ans. I think he did; he had some second-hand trees.

Cross-int. 80. How many, and when, and what kind?

Ans. One second-hand boy's tree, I think, the last time I worked for Shumway, not any more second-hand trees; he had two new ones the last time I worked for him; he had some, I believe, before I worked for him this last time; he had an infant's tree that he used to bring up there to be repaired.

Cross-int. 81. Were these trees (I mean the three specified) procured by Newton at the same time?

Ans. I think they were, but I can't tell exactly whether bought at the same time.

Cross-int. 82. What enabled you to recollect so fully about Newton's purchase, when you can't recollect other instances of the same sort? Have you not been told that the Newton trees, or some of them, were new, and not second-hand?

165 (Objected to because it nowhere appears that he can't recollect other instances, and, on the contrary, has stated several.)

Ans. I remember seeing him up there to talk about a tree; he sent his boots there. I say the Newton tree is a new tree. I say I do not understand the latter part of the question fully.

Cross-int. 83. Have you not been told by some one that Newton's trees, or some of those bought of Shumway, were new and not second-hand?

Ans. Never; I never was told such a thing.

Cross-int. 84. Have you not heard some one say so?

Ans. I don't recollect. It might perhaps be sold as a second-hand tree, if you understood it; I did not hear it.

Cross-int 85. You did not hear the bargain made by Newton, did you?

Ans. Not that time.

Cross-int. 86. May you not have confounded the trees which Newton had when you last worked for Shumway, as you say, with those previously purchased by him?

Ans. I think they were new ones—two new ones; I am certain that they are. I couldn't confounded them, because he used to come up there, and I recollect some conversation.

Cross-int. 87. Have you any time-book showing where you were employed during 1865?

Ans. I don't believe I've got that book now, it was burnt; I lent it to my boy in the house and it is lost, but I keep my book in my head; my head is my memorandum.

Cross-int. 88. What did you mean a short time since by swearing that you had such time-book in your coat at home, and would produce the same?

Ans. I meant the book I was using now; I didn't know you meant '65, nothing stated about '65.

Cross-int. 89. Have you got a time book now, and what time is covered by it?

Ans. I've got the '66 book, that's all.

Adjourned to 3 p. m.

166 Direct examination resumed by J. E. Maynadier, esq.,

Int. 28. For whom were you at work at the time Mr. Howe came to Mr. Shumway's place at Worcester?

Ans. For Mr. Shumway.

Int. 29. For whom did you work while Howe remained at Worcesin that shop?

Ans. For Mr. Howe.

Int. 30. After Mr. Howe left that shop for whom did you then work?

Ans. I remained with Mr. Shumway till I went to work for my brother.

Int 31. How long did you work for your brother?

Ans. Till I went to work for Mr. Brown; two or three months.

Int. 32. What was your brother's business then, and where did he work?

Ans. He was a machinist, in the same shop where I had been at work for Shumway, in the same building down stairs.

Int. 33. About how long was it after Mr. Howe left the shop in Worcester, before you went to work for your brother?

Ans. I went to work in the fall for my brother. Not quite a year; fall of the same year.

Int. 34. Do you recollect what month it was when Mr. Howe left Worcester?

Ans. I don't exactly.

Int. 35. About How long did you work for your brother, as near as you can recollect?

Ans. Between two and four months.

Int. 36. And you say you worked for Brown about three months. When was it then that you next went to work for Shumway?

Ans. The same year, the same summer. The same year I worked for my brother I mean.

Int. 37. You say you went to work in the fall for your brother, and that you worked for Shumway till you went to work for your brother, and that you worked for your brother two or three months after you began, and for Brown about three months. Now when did you leave off working for Brown?

167 Ans. I worked for my brother till March. I may be mistaken about the time, it covers two years: I went to work in the fall, and worked till March next year for my brother; then went to work for Brown, and after that worked for Shumway.

Int. 38. You have said that you left Shumway before the 4th of July, '65. About how long were you out of his employ at that time?

Ans. After one week or so.

Int. 39. In your 20th cross-answer, you say that Mr. Newton

"came to Shumway's shop last summer." Do you mean the summer of '66?

Ans. A year ago this summer, '65.

Int. 40. What centre-piece castings like these patterns (Lewis exhibits) did Mr. Shumway get after Mr. Howe left the shop in Worcester?

Ans. I don't recollect. He got some of them new ones (pointing to Exhibit "Bradish, T. G. Kent.")

Int. 41. How many centre-piece castings did Mr. Howe have, and what were they like?

Ans. Six; like those patterns, (Lewis exhibits.)

Int. 42. Besides these six, what kind of centre-piece castings did Shumway use?

Ans. The new one like that one there, (tree marked "Bradish, T. G. Kent.")

Int. 43. What kind of centre-piece castings were in the trees which Newton had? I mean the two trees which you say were new.

(Objected to because same matter inquired of in direct examination.)

Ans. Like that one ("Bradish, T. G. Kent.")

Int. 44. What kind of centre-piece castings was in that boy's tree which Newton had, which you say was second-hand?

Ans. The old pattern.

Int. 45. Was the centre-piece casting in that boys' tree one of the six which Mr. Howe left or not?

Ans. I don't recollect that.

Int. 46. You say that some of those six centre-piece castings which Mr. Howe left were made into infants' trees. What do you do to a centre-piece casting to make it into an infant's tree?

(Objected to as not rebutting, and immaterial.)

168 Ans. We had the casting, it was in the shop some time; we work it up, chip it off, and file it.

Int. 4. What size of castings did Mr. Shumway use for infants' ?trees

(Objected to because it don't appear he has used any.)

Ans. Youth's tree.

Int. 48. What was the tree that Fairbanks, of Medway, bought?

Ans. A boy's tree.

Int. 49. A second-hand or a new tree?

Ans. A new tree.

Int. 50. Did you work on it?

Ans. I did.

Cross-examination resumed by F. A. Brooks, esq.

Cross-int. 90. Did not Mr. Fairbanks have some trees of Mr. Howe while you worked for Mr. Howe?

(Objected to.)

Ans. He did.

Cross-int. 91. New ones?

Ans. Yes.

Cross-int. 92. Are these the trees to which you refer in your previous testimony?

Ans. No.

Cross-int. 93. How do they differ from those?

Ans. He had some like the boy's there, the new one ("Bradish, T. G. Kent.")

Cross-int. 94. Is the Bradish tree just referred to, and called by you a boy's tree, really a boy's tree?

Ans. It was a boy's tree that he had, the same pattern. I don't say this (Bradish) tree is a boy's tree.

Cross-int. 95. Didn't you call it a boy's tree in your 93d cross-answer.

Ans. If I called it a boy's tree, I made a mistake and take it back. That isn't a boy's tree, it is a youth's tree.

Cross-int. 96. What means have you now of determining whether the trees had by Fairbanks of both Howe and Shumway, as you say, were of any particular kind, and of what kind in each case?

Ans. The latest style, the latest pattern.

169 Cross-int. 97. Were they all of the same style?

Ans. I couldn't tell that.

Cross-int. 98. When did Fairbanks have trees of Howe?

Ans. During the time Howe left and the time I quit Shumway.

Cross-int. 99. Howe was not then in Worcester, was he?

Ans. No, sir.

Cross-int. 100. How then could he furnish Fairbanks with trees, to your knowledge?

Ans. No, I don't recollect he did.

Cross-int. 101. You have stated in direct examination that "new trees they called second-hand trees in Mr. Shumway's shop." Who do you mean by they?

Ans. Shumway called it so and the customers called it so.

Cross-int. 102. What customers ever called new trees second-hand trees?

Ans. He used to call it; used to tell me to call it so.

Cross-int. 103. Please answer the last question.

Ans. No customers called it so.

Cross-int. 104. Why then did you state, a moment ago, that customers called it so? Did you not know you were speaking what was not true?

Ans. He used to call it so; used to tell me to tell customers so.

Cross-int. 105. Why did he tell you to tell customers that new trees were second-hand trees?

Ans. I don't know.

Cross-int. 106. Did you ever so tell customers?

Ans. I don't recollect that I did.

Cross-int. 107. Is it not easy to distinguish a new tree from a second-hand tree?

Ans. It is easy enough.

Cross-int. 108. Did you or Mr. Shumway ever tell customers that second-hand trees were new?

Ans. I don't recollect.

Cross-int. 109. Can you now specify any trees, except those had by Newton & Fairbanks, which were new as you say, and which you were to call second-hand?

Ans. I would if I should see 'em.

170 Cross-int. 110. Do you know where you could see any such trees?

Ans. Here is one here, ("Bradish, T. G. Kent.")

Cross-int. 111. Were you told to call that a second-hand tree?

Ans. I don't remember.

Cross-int. 112. Did you ever call it so?

Ans. I don't remember.

Cross-int. 113. Did you ever call any new tree a second-hand tree?

Ans. I don't recollect that either.

Cross-int. 114. Did you ever hear Mr. Shumway call a new tree a second-hand tree?

Ans. I don't remember.

Cross-int. 115. Did you ever hear anybody call a new tree a second-hand tree?

Ans. No, sir, not that I know of.

Direct-examination resumed:

Int. 51. What were trees such as the one before you ("Bradish, T. G. Kent") called in Mr. Shumway's shop?

(Objected to because already testified to in 22d and 23d direct answers, and because not rebutting cross-examination.)

Ans. They was called second-handed.

Cross-examination resumed:

Cross-int. 116. Is it not second-hand? Has it not been in use?

Ans. That has been used, certainly.

Direct-examination resumed:

Int. 52. Had it been used when it left Shumway's shop?

Ans. I don't know.

Int. 53. Do you know when that tree was made?

Ans. No, I don't recollect.

Int. 54. Is that tree now a new or an old tree?

Ans. It is a second-hand tree now. It has been used. It was new once.

171 Int. 55. Has it been used much or little, in your opinion

Ans. Not much.

OCTAVE BEAUVAIS.

(Adjourned.)

Deposition of George W. Tucker, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 24TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. George W. Tucker; age, 51; residence, Milford, Mass.; occupation, boot-treer.

Int. 2. Did you ever work for Wm. H. Comstock? If so, when, and for how long, and at what?

Ans. I have. I began to work for him in '43, and left somewhere in '51, I think. I worked at treeing.

Int. 3. Did you ever work for him after this? If so, about what time, and how long did you stay with him?

Ans. I did from '63 to '65.

Int. 4. Have you any knowledge of Comstock's selling out to Barber & Eames? If so, where and for whom did you work at that time?

Ans. I have. I worked in Milford for him at the time.

Int. 5. What kind of trees had Comstock had previous to his selling out, and what kind did he then have, and how many of each?

Ans. He had the old wooden slide-trees, quite a number, some in use and some not, and, I think, four brass trees.

Int. 6. Did you ever work for Barber & Eames? If so, for how long?

Ans. I have; I commenced when they bought out Mr. Comstock, and worked for them till they dissolved.

Int. 7. For whom did you work then?

Ans. For Mr. Barber.

Int. 8. What kind of trees did Barber & Eames have while you worked for them, and how many of each?

Ans. They had some of those wooden trees, some in use and some not, and, I think, four brass trees.

172 Int. 9. What kind of trees did Barber have when you worked for him, and how many of each?

Ans. Some of those wooden trees, I can't tell how many, and two of the brass trees.

Int. 10. Where did you first see a tree with changeable backs, and when, and for whom were you then at work?

Ans. At Milford, while at work for Mr. Barber. I think it was in '56.

G. W. TUCKER.

Counsel for respondent declines to cross-examine.

Deposition of S. B. Haynes, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 24TH, 1866.

Int. 1. State your name, age, residence, and occupation.

Ans. S. B. Haynes; age, 53; residence, Bolton, Mass.; occupation, manufacturer of boots and shoes, and farmer.

Int. 2. Look at tree now shown you, marked "Bradish, T. G. Kent, notary public," and state, if you know, from whom Mr. Howe obtained it.

Ans. Mr. Howe obtained the tree from me. I should think that was the tree.

Int. 3. When, and from whom did you obtain it, and what did you pay for it?

Ans. I can't fix the day I obtained it, but I can fix the day I ordered it and the day I paid for it. I ordered it of Mr. E. L. Shumway, June 28th, 1865; paid twenty dollars for it, July 15th, 1865. I said to Mr. Shumway, "I wan't you to fix me out with a youth's tree." He sent me this tree, and I paid for it.

Int. 4. Did you about that time get another tree of Shumway? If so, what kind of tree was it, and what did you pay for it?

Ans. I got a boy's tree of Mr. Shumway 28th of June, '65, and paid thirty dollars for it.

Int. 5. Did you pay Mr. Shumway nothing else for that
173 youth's tree than twenty dollars; was that in fact the full and whole price of that tree?

Ans. That was all I paid.

S. B. HAYNES.

Counsel for respondent declines to cross-examine.

Deposition of Jarvis Howe, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 28, 29, 1866.

Int. 1. Have you before testified in this case?

Ans. I have.

Int. 2. Please compare "Exhibit Lewis No. 2" with the centre-piece casting of "Exhibit No. 1, C. H. T.," and measure the bulge on the bottom front of the casting where the foot goes on, and state how it compares with the corresponding part of the pattern, and read the first part of the 35th answer of E. L. Shumway as a witness in this case for defendant, and state whether the comparison there made as to this is correct.

(Objected to because the witness has been examined as a witness in this case in a former deposition given by him as to the same subject-matter, and because the said subject-matter was opened originally by the complainant, and the answers of Shumway, referred to, were given in reply to the testimony taken previously by complainant on this subject, and so cannot be rebutted by further testimony.)

Ans. I find by caliper measure that on the biggest place of the casting of the bulge, on the front part of the socket where the foot goes on, the casting is not quite as large, as wide, as the pattern in the corresponding part. At the top of the socket where foot slides up to the centre-piece casting, the casting is about one-sixteenth of an inch narrower that the corresponding part of the pattern. I find that the casting across the face of the socket is not as wide as the

corresponding part of the pattern, except at the bottom of the casting, the casting is wider than the pattern.

Int. 3. How do you account for the curve at the bottom
174 part of the pattern being different from the curve at the bottom part of the casting, as stated in your last answer?

(Objected to as above, and also that it does not appear that the curve is different.) The question is then added to as follows:

I mean how do you account for the fact, that at the bottom of the casting the casting is wider than the pattern.

Ans. I account for this difference, because it is plain to me that the pattern at the corners or curves has been trimmed off since that casting was taken, for the purpose of saving labor in fitting up castings for trees.

Int. 4. Now, please, pursue the comparison requested in the second interrogatory following the measurements given by Mr. Shumway in his 35th direct answer, except those as to which you have previously testified, and account for any differences found.

(Same objections as to interrogations 2d and 3d.)

Ans. On the opposite side of the casting, across the casting in line with the ears, the casting is smaller than the corresponding part on the pattern. The reason for this difference is, after the casting is taken from the pattern it has to be chipped or filed away to admit the side brasses being attached to the centre-piece. The socket part of the casting is made smaller, being filed off. I find that at the bottom of the socket the casting is considerably thicker—about one-eighth of an inch—than the pattern. It continues about the same thickness all the way up. The pattern does not fully keep its thickness like the casting from the bottom part to the top—it does not taper like the casting, but becomes thicker towards the top for the whole length of the face of the socket. I account for this in this way—for the purpose of pitching the foot part of the tree, so as to make a better shaped tree, an alteration has been made in the pattern. The upper part of the socket has been thickened in the pattern since the casting was made from it, and the lower end of the socket thinned. I don't know this to be a fact, but I have no doubt of it. I also find that the pattern is about three-sixteenths or one-quarter of an inch longer than the casting. I account for this difference by the shrink and finish of the casting. The flange, projecting in front from the journal, is a very little thicker than the corresponding part of
175 the pattern. This is accounted for by rapping the pattern in the mould, so that the pattern may be withdrawn from the sand. The lower part of the slot, where the lock goes, is wider in the pattern than in the casting; perhaps one thirty-second of an inch. It is caused by rapping the pattern as before. The journal is bigger in the pattern than in the casting. The casting—that is, the journal, has been turned, and squared up on the end to fit in the registers.

Int. 5. Now pursue the same course with regard to Mr. Shumway's answers to the 37th cross-interrogatory.

(Same objection as before taken, also because the complainant having cross-examined Shumway as to this subject as new matter, he is

not at liberty to control the evidence given therein by said Shumway.)

Ans. I find the part where the wood goes on about one-eighth of an inch shorter than in the pattern. I account for this by rapping the pattern and the shrink of the metal. I find the flange or rib on the front part of the casting is wider on the casting than on the pattern. One of those flanges, at the corresponding point where I measured the other, is a trifle wider than the other, and both are a trifle wider in the casting than in the corresponding part of the pattern. I account for this difference by rapping the pattern. The slot is not so wide in the casting as in the pattern; it is a trifle narrower, and I account for it by the rapping of the pattern. I find the casting between the rib and side brass not appreciably wider in the casting than in the pattern.

Int. 6. You have accounted for certain differences by the shrinkage of the metal and the rapping of the pattern and filing and chipping of the casting. Please compare "Exhibit Lewis No. 4" with centre-piece casting of tree marked "Howe, N. A. P.," and state whether you find or not the same differences between them as in the first comparison.

(Objected to because new matter introduced by complainant as such, and not material to the issue in this case, the "Howe, N. A. P.," tree not being in controversy here in any way.)

Ans. Having gone over the pattern No. 4 and casting carefully, I find every difference as I found them in the first comparison; I mean those accounted for as inquired of.

Int. 7. Now please answer the last question comparing
176 "Exhibit Lewis No. 2" with centre-piece casting of tree marked "Leland. N. A. P."

(Same objection stated to int. 6.)

Ans. I make the same answer as before.

Int. 8. In your 4th answer you find a difference between the socket part of the casting and the corresponding part of the pattern. Please examine carefully the same parts on the Leland tree and compare them with the corresponding parts of the pattern, and state whether the difference you find in your fourth answer in this respect is or is not found between the Leland tree and the pattern.

(Same objection as the last.)

Ans. I do not. The socket parts of the pattern and those of the casting of the Leland tree correspond exactly as the pattern now is, except the alterations made in finishing.

Int. 9. Please measure carefully along each rib on the front part of the pattern "Lewis No. 2," from the flange which projects towards the front to the notch at the upper end of the ways on which the cross-heads rest and move, and state what difference, if any, you find in the distance of those notches from the bottom part of the flange.

(Objected to as before.)

Ans. About one-sixteenth of an inch, the notch on the right hand of the pattern when the pattern is held with the journal end upwards

is about one-sixteenth of an inch further from the bottom of the flange than the other notch, measuring along the ribs.

Int. 10. Now please make the same measurements on the trees "No. 1, C. H. T.," and "Leland, N. A. P.," and state as before.

(Objected to as in int. 9th.)

Ans. I make the same answer.

Int. 11. You say you find that one of the ribs or flanges of "No. 1, C. H. T.," is a trifle wider at one point than the other. Measure the corresponding ribs at the corresponding points on tree marked "Leland, N. A. P.," and state how they compare.

Ans. I find the same difference in the ribs of "Leland, N. A. P.," as in "No. 1, C. H. T."

Int. 12. You will find on close examination that the part of the right-hand rib, (the tree being held as before,) next the ways on which the cross-heads move, is rounder and fuller than the corresponding part of the other rib in "Exhibit No. 1, C. H. T."

177 Look at the corresponding part of "Exhibit Leland, N. A. P.," and "Lewis No. 2," and state how they compare in this respect with "No. 1, C. H. T."

(Objected to as before.)

Ans. The same difference is plain in both.

(The counsel for complainant here requests the solicitor for defendant to allow the wooden front of tree marked "Rice No. 3," to be removed by the witness, in order that this witness and others to be called to the same point may compare it with "pattern Lewis No. 1, E. B. S."

Counsel for defendant says that inasmuch as the "pattern Lewis No. 1" is not properly before the court in this case, and inasmuch as a comparison thereof with the "Exhibit Rice No. 3" is not material evidence to the issue, and as a very large amount of time has been unnecessarily, as he believes, consumed in this case upon side issues, he will not consent to anything calculated to prolong the taking of testimony therein. The present deponent being now under examination for the third time in this suit.

And therefore solicitor for complainant informs solicitor for defendant that he will prove that the centre-piece casting of tree marked "Rice No. 3" was cast from the "pattern Lewis No. 1, E. B. S.," if he will permit the front to be removed, and if not he will here close this deposition, that being the only point of examination proposed.

Solicitor for defendant infers from the spurious information above communicated that the complainant has no real occasion for the removal of the front from said boot-tree, as he must have got his information without the front being removed therefrom. Whereupon the deposition is closed.)

JARVIS HOWE.

Before being sworn to, witness desires to make an alteration in his answer to the 2d direct interrogatory above, and says:

I say there that "at the bottom of the casting, the casting is wider

than the pattern;" I find on re-examination of the casting and pattern that I was mistaken in this—and I find that the pattern is wider than the casting at those corresponding points—I made this mistake because the casting had been filed off higher up on the face of the socket than where I measured on the pattern, and therefore I did not measure corresponding parts of the casting and the pattern.

JARVIS HOWE.

178 Deposition of William F. Field, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 29TH, 1866.

Int. State your name, age, residence, and occupation.

Ans. Wm. F. Field; age, 35 years; residence, Boston, Mass.; occupation, machinist.

Int. 2. How long have you been a machinist, and state generally what experience you have had in pattern-making and in obtaining castings from patterns?

Ans. For about eighteen years. My experience has been for the last eighteen years off and on. I've made a great many patterns, got a great many castings and finished them up.

Int. 3. In making patterns, do you make them of the same dimensions as the casting is designed to be? If not, what is the difference allowed, and what sort of rule is commonly used by pattern-makers?

(Objected to, because pattern-making, as an art, is not here in issue.)

Ans. We do not make them of the same dimensions as the castings. We calculate $\frac{1}{8}$ of an inch to the foot for shrinkage. Pattern-makers use a regular pattern rule, what is called a shrinkage rule. It is just $\frac{1}{8}$ inch to the foot longer. They are generally 2 feet and $\frac{1}{4}$ f an inch long.

Int. 4. Please compare the exhibit now shown you, marked "Lewis No. 2," with the centre-piece casting of tree marked "No. 1. C. H. T., G. D. N.," following the measurements made in 35th direct answer of E. L. Shumway, (which will be read to you by the examiner,) and state how they compare, giving the reasons for the differences, if any.

(Objected to because immaterial; also because not addressed to witness's knowledge of facts, and because it assumes the fact to be that the casting was made from a certain pattern and asks witness to account for certain existing differences of shape.)

Ans. I find the pattern across the front face of the socket where the foot goes on a little wider than the casting. I use calipers
179 to measure it with. I find no place on the front face of that socket where the casting is wider than the pattern. I find on the opposite side that the pattern is larger than the casting. The reason of this difference is shrinkage for one thing. Another thing, the socket has been filed off, finished. And part of the casting has been cut away to let the brass in flush with the casting. The casting is thicker through at the socket than the pattern; it looks to me

as though the pattern had been trimmed off there, towards the lower end. The pattern is longer than the casting owing to the shrinkage, the rapping, and to its having been filed or squared off in a lathe at the top. The flange I don't find much larger, it is a very little thicker. I mean the flange projecting to the front near the journal. It would be thicker owing to rapping the pattern. The ears that hold the lock I find larger in the pattern than in the casting. They have been filed down, rounded right over. Those ears are put on with brads and are easily knocked off. The slot below those ears is lower on the pattern than on the casting. I see the pattern has been cut out here about ¼ of an inch, but the mark of the cut is plain in the pattern, and the casting agrees exactly with the pattern before it was cut. That slot in the pattern appears to be a little wider than in the casting, caused by rapping the pattern. The standard up near the journal projecting towards the back, has been filed down, I think, and the pattern has been altered in that respect, and on looking at the corresponding parts in the other tree ("Leland, N. A. P.,") I am satisfied of this. The flange for side brasses on each side of the tree is larger in the casting than in the pattern, I mean the space for the side brasses, a piece having been put into the top of the space in the pattern about ⅛ of an inch long. The journal is smaller in the casting owing to its having been turned down.

Int. 5. Pursue the same comparison, following the measurements made by Mr. Shumway in answer to his 37th cross-interrogatory, which will be read to you?

(Same objection as to int. 4th.)

Ans. The part where the wood goes on in front is 3-16 of an inch longer in the pattern than in the casting, or pretty near it. I account for this by shrinkage and rapping the pattern. The flanges or ribs on the casting are a 'little mite widest, owing to rapping
180 the patterns. The slot in which the rod works is a little the smallest or narrowest in the casting, owing to rapping the pattern. The defects and marks spoken of are matters of every-day occurrence. Sometimes a little piece of the sand drops out, the metal flows over it, and always makes those places. The casting between the rib and side brass I find very little difference in, between that and the pattern in corresponding parts, only what would naturally be accounted for by rapping the pattern.

Int. 6. Now please describe minutely the method of making a mould from "pattern Lewis No. 2?"

(Same objection as to No. 3; also that witness is a machinist and not a moulder.)

Ans. A box longer and wider than the pattern, having two parts, is had, and the long part of the pattern is laid on the bottom of the box, that is, the pattern is raised a little from the board at the bottom of the box, so as to let the sand go under it; then the pattern is laid with the back part down, and the box is filled with sand and rammed down hard. When the box is filled, it is turned bottom side up, and the upper surface of the sand which was the bottom is sprinkled with powdered charcoal or something of the kind; then the

other part of the pattern is put on, and the other half of the box is put on and filled with sand which is rammed down hard, as before; then we make a couple of gate holes through the sand to pour the metal in and vent it. Then the upper part of the box is unhooked and taken off, taking with it the small part of the pattern. Then a rod is put in to draw out the long part of the pattern; we generally have a pointed piece of iron about eight inches long which is driven into the pattern, the marks of which are visible on the face of the pattern; I mean the draw-holes. Then they rap the drawn-iron all around, which loosens the pattern and frees it from the sand, and then draw it out. They draw out the other part of the pattern the same way. Then they set the cores in the spaces left by the core prints, and put the top part of the box on, and hook it together, and it is all ready to pour the metal in.

Int. 7. Now compare very carefully centre-piece casting of tree marked "Leland, N. A. P.," with the pattern marked "Lewis No. 2," as you made your former comparison, and state whether
181 you find the same differences as in that comparison, and state any other differences you find.

(Objected to as above.)

Ans. I find no differences between "Leland, N. A. P.," and the pattern as it now is, excepting the slot for the lock is as before explained, and the little pieces put on each side to shorten the space for the brass. The same differences which have before been accounted by shrinkage, and finishing and rapping, I find in this tree.

Int. 8. Now please measure carefully the distance of the notches at the top of the ways on which the cross-heads move, and state what difference, if any, in their distance from corresponding points.

Ans. Measuring from the bottom of the standard, which projects towards the front along each rib, the right-hand notch, holding the pattern with the journal end up, and the front of it towards me, is about one thirty-second of an inch further from that point than the other notch is from the corresponding point.

Int. 9. Now make the same measurements on the castings of the trees marked "Leland, N. A. P.," and "No. 1, C. H. T.," and state how they compare, in this respect, with the pattern.

(Objected to as above.)

Ans. There is the same difference in this respect in both castings as in the pattern.

Int. 10. Examine the ribs near the ways on these three exhibits, "Leland, N. A. P.," "No. 1, C. H. T.," and "Lewis No. 2," and state what difference, if any, you perceive on these ribs, and on how many of these exhibits you perceive the same difference.

(Objected to as above.)

Ans. The lower end of the right-hand rib on all these exhibits is a little higher and a little wider than the left hand rib. The difference is plain to the eye on all the exhibits.

Int. 11. Now compare, as before, the pattern marked "Lewis, No. 4," with the casting of the tree marked "Howe, N. A. P.," and state whether or not you find between them all the differences

which you have above expressed and accounted for by rapping, finishing, and shrinkage.

(Objected to as above.)

Ans. I find the same differences exactly all the way through.

Int. 12. Now state what your opinion is as to what patterns the centre-piece castings in "Howe, N. A. P.," "Leland, N. A.
182 P.," and "No. 1, C. H. T.," were cast from, and state how strongly you entertain that opinion.

(Objected to because immaterial, and the opinion of the witness is not evidence, he not being a moulder, and because the witness can have no experience of the kind implied in the interrogatory.)

Ans. I should say that "Howe, N. A. P.," was taken from "Lewis No. 4," and that the other two were cast from this pattern, "Lewis No. 2." I am positive they were cast from the pattern with two or three alterations.

Int. 13. Suppose a competent pattern-maker desired to make a second pattern for a centre-piece casting for a boot-tree like "Leland, N. A. P.," or "No. 1, C. H. T.," would he or not, in your opinion, be at all likely to make a pattern, the casting from which it would be impossible to distinguish from the castings of those two trees? I refer especially to the parts which are hidden by the wood part of the front when it is in its place.

(Objected to.)

Ans. He would not be likely to, unless some one carried him a pattern, and told him to make it exactly like that, and then it would take him three times as long as to make a pattern similar.

Int. 14. In making duplicate patterns, is it customary to make them correspond exactly; is it customary to make them correspond in every part? If not, how carefully are they made? If a man should bring you a pattern "Lewis No. 2," and tell you he wanted a duplicate of it, without definite instructions to make it a fac simile, what kind of a pattern would you make him?

(Objected to as incompetent.)

Ans. It is customary so to do. If a man came to me and wanted a duplicate of that, I should make it as nearly like it as I could.

Int. 15. Do you mean that a pattern-maker could reproduce pattern "Lewis No. 2" so exactly that a casting taken from it could not be distinguished from a casting taken from a duplicate? If so, state what kind of a job it would be, and what kind of a man it would take to do it.

Ans. Well, it would be a hard matter. It would take a man who was master of his trade to do it.

(Solicitor for complainant here desires solicitor for defendant to consent to the removal of front of "Exhibit Rice No. 3, G.
183 D. N.," for the reasons expressed at the close of complainant's third deposition; which request is declined by solicitor for defendant for reasons there stated.)

Int. 16. Are you now, or have you ever been, engaged in, or in any way interested in, the manufacture of boot-trees?

(Objected to.)

Ans. I am not, and never have been.

Cross-examination by F. A. Brooks, esq., counsel for defendant:

Cross-int. 1. "Pattern Lewis No. 2," as you now see it, would not produce a casting like that found in "No. 1, C. H. T.," would it?

(Objected to because the witness has distinctly testified in his direct that it would not, and because there is no pretence that it would.)

Ans. It would not.

Cross-int. 2. Have you not, in giving the foregoing answers, supposed the several patterns examined to have been the same employed in producing the castings, and testified upon the understanding that they were so employed in fact? Did you ever see the patterns or castings before to-day?

Ans. I have. My belief is that the castings were taken from those patterns. I never saw the patterns or castings before to-day.

Cross-int. 3. Is the belief, which you say you entertain in your last answer based upon information given you by others to some extent?

Ans. It is not.

Cross-int. 4. What reason have you for believing that pattern Lewis No. 2 was used in the casting of two of these trees, if such castings could not be produced from the pattern in its present form, and you never saw it in any other form, and if you have received no information from other parties that such pattern was once used in some other form?

Ans. I take it from the measurements.

Cross-int. 5. You do not mean that the measurements of the casting and pattern as now existing are exactly the same, do you? I mean boot-tree casting "No. 1, C. H. T.," and pattern "Lewis No. 2."

Ans. They are not the same now.

WILLIAM F. FIELD.

184 Deposition of Joseph B. Crosby, taken, subscribed, and sworn to before N. Austin Parks, examiner.

Int. 1. Have you before testified in this case?

Ans. I have.

(Solicitor for the complainant here desires solicitor for respondent to allow time to remove the wooden front from "Exhibit No. 1, C. H. T.," which he observes has been replaced since the last examination, in order that the witness may compare those parts of the centre-piece casting of that tree which are hidden by that front, with the corresponding parts of pattern marked "Lewis No. 2."

Solicitor for defendant says that this witness, at his former examination testified on this very point, the front having been separated for that purpose; that subsequently complainant has examined several witnesses to the same point, the two parts being separated from each other for that purpose; that all the evidence in the case being closed except the examination of the present witness, he supposes there would be no further occasion nor right even, for complainant

to re-examine witness on this point, and so replaced the parts of the boot-tree previously separated for the special purpose of inspecting the interior of the same; and he now declines to reopen the examination of the witness on this point, or to have the boot-tree separated into its original parts for that purpose.)

Int. 2. Please state what condition the tree marked "No. 1, C. H. T," was in when you gave testimony before, so far as an opportunity to measure and examine carefully that part of the casting now covered by the wooden front is concerned.

Ans. The upper part of the wood was raised from the iron about an inch and a half, the lower part not being raised. The triangular space thus made gave me but small opportunity for examination of the metal.

(Solicitor for complainant now repeats his request.

The solicitor for respondent declining to give any answer to this request, is hereby notified by solicitor for complainant that he will remove the wooden front of the exhibit as soon as he obtains a screw-driver for that purpose.)

185 Int. 3. In making a mould from a pattern, do you obtain a mould in the sand of the exact dimensions of the pattern? If not, how do the dimensions of the mould and the pattern differ, and state the reasons, illustrating by the use of the "Pattern Lewis No. 2?"

(Objected to.)

Ans. The mould differs from the pattern, the differences being occasioned by what is called rapping. The pattern is rapped or struck in different directions so as to loosen it in the sand, thereby clearing the pattern from the mould, which allows the foundry-man to draw the pattern out of the mould with little or no disturbance of the sand. The effect of this rap on such a pattern as "Lewis No. 2," and on the mould thereby made, is, in the first place, to increase the width of the mould beyond the width of the pattern; in the second place, it diminishes the width of enclosed bodies of sand, such as enter into the slot for the lock and the slot for the rod; it also diminishes, in the mould, the distances between two opposite projections, such, for example, as the distance between the lock pivot-ears and the standard. The distance between those parts of the casting, against which the ends of the wooden front part abut, will be made shorter in the mould by rapping, than a measurement taken between the corresponding parts of the pattern, because the body of sand will be struck at each end of the pattern in rapping, and will thereby be shortened. The extreme length of the mould will measure more than the length of the pattern, because the ends of the pattern, in rapping, drive the sand outward towards the end of the flask; and the width of the mould is wider than the pattern because the sand of the mould is driven outward towards the sides of the flask by rapping the pattern, but any bodies of sand partly enclosed by or between parts of the pattern are made smaller than the spaces containing the sand, this being condensed by rapping the pattern.

(Counsel for complainant here desires to state that having obtained

a screw-driver, he commenced to remove the front from "No. 1, C. H. T.," by extracting one of the screws which holds it on, but that before he had completely extracted said screw, the counsel for respondent interfered and took the exhibit into his own possession.)

Int. 4. What will be the effect upon the casting (as to dim-
186 ensions) produced by the differences between the mould and the pattern, which you have enumerated?

(Objected to.)

Ans. The casting should be and will be in accordance with the mould as varied from the pattern by the rap, excepting where it is modified by the effect of shrinkage of the iron. For example, referring to "Exhibit Lewis No. 2," though the extreme length of the mould would be longer than the pattern; yet a casting made in that mould would be considerably shorter than the pattern, as the shrinkage of the metal would be about three-sixteenths of an inch in that direction, and it is in this direction only that, in castings from this pattern, shrinkage would be quite apparent; for in other directions there is not sufficient metal to call for more than about one thirty-second of an inch of actual shrinkage. I mean that one thirty-second part of an inch is the utmost appreciable shrinkage in any other part than the length. In castings from this pattern, the enlargement of the mould by rapping will produce greater dimensions in the casting than in the pattern, except in a longitudinal direction where the proportion of shrink to the rap is quite large.

Int. 5. What will be the effect produced on the casting by the enlargement of the mould by rapping, where there are spaces in the casting? I refer especially to the space for slots in the lock and the space which is occupied in the complete tree by the wooden front.

(Objected to.)

Ans. All spaces in the pattern containing sand should, by the rapping of the pattern, produce smaller spaces in the casting. The lock space should be smaller in the casting than in the pattern, and the length in the casting for the wooden front should be considerably shorter than the corresponding part of the pattern, because the rap and shrink both work in the same direction in this particular instance.

(Solicitor for complainant here desires solicitor for respondent to produce "Exhibit No. 1, C. H. T.," which is done.)

Int. 6. Please read the 35th direct answer of E. L. Shumway, and make the measurements there described by him, and if your measurements differ from his, state how; and state the reasons for any differences stated by him which you find to exist between the pattern and the casting, excepting those as to which you have for-
187 merly testified.

(Objected to for reasons stated in interrogatories to Howe.)

Ans. I find Mr. Shumway right in every particular except the first; and there I find the pattern larger than the casting, instead of smaller as stated by Mr. Shumway. Where I find the casting at the part where the foot goes on smaller than the pattern, I account for the difference in the removal of the metal of the casting, the surface there evidently showing that it has been worked down, no trace of the sur-

face left by the casting remaining. A rebate has also been cut out from two edges of this part of the casting to receive the side brasses. Where the socket is narrower at the top than in the pattern, I account for the difference by the removal of the metal in finishing. I can't account for the casting being thicker through than the pattern. To produce such a difference, the pattern must have been modified from the condition in which I now find it. The difference in length between the pattern and the casting is accounted for by shrinkage and by finishing off metal from the end of the journal. The flange near the journal differs slightly in thickness, which difference is occasioned by the rapping of the pattern. The journal of the casting has evidently been finished by turning, which accounts for its being smaller than in the pattern.

Int. 7. Now pursue the same course with regard to the answers of Mr. Shumway to the 37th and 39th cross-interrogatories, so far as you can with the wooden front upon the exhibit.

(Objected to as before.)

Ans. The difference in length between the pattern and casting, where the wooden front part goes in, is five thirty-seconds of an inch instead of one-quarter as given by Mr. Shumway, and this difference in the measurements of the casting and pattern is what it should be by reason of rapping and shrinkage. I can't see the ribs in the casting about which Mr. Shumway testifies; but the ribs in the casting should be wider in the casting than they are in the pattern, on account of the sidewise enlargement of the mould consequent upon rapping. Mr. Shumway is right about the slot, (which I measure from the other side of the casting,) and the difference is such as is due to the rapping of the pattern. I can't see the defects mentioned,
188 nor the parts between the ribs and side-brasses, owing to their being covered up by the wooden front.

Int. 8. Does a comparison between the front part of the socket where the foot goes on, and the corresponding part of the pattern, furnish or not reliable data for determining whether that casting was taken from that pattern; and if not, why not?

(Objected to.)

Ans. It does not, for the reason that the casting at the place indicated has had its surface finished so that there is none of the original surface as left by casting now visible, and it is impossible to say how much or how little metal has been removed.

Int. 9. In determining whether or not a particular casting has been taken from "Lewis No. 2," by the comparison of what parts would you expect to be especially guided? and give your reasons.

(Objected to.)

Ans. After going over the pattern and casting carefully to see that there were no measurements in the casting which could not be produced from the pattern, making proper allowances for shrink and rapping, I should then direct my attention to those parts of the pattern which are eccentric, or of singular formation, in contradistinction to the regular or geometric parts of the pattern, noting carefully defects of workmanship, want of symmetry between two correspond-

ing parts, then should measure carefully distances of depressions or notches from a salient part of the pattern, especially when such depressions or notches seem to be placed more by the will of the operative, than fixed in position by exact mathematical or mechanical requirement. All these peculiarities I should carefully compare with the casting, and it would be from their similarity or dissimilarity in these respects that my opinion would be founded as to whether a particular casting were taken from a particular pattern. The most instructive part of this tree, "No. 1, C. H. T.," is covered up by the wooden front.

Int. 10. Examine that part of the pattern which corresponds with the part of centre-piece casting of "No. 1, C. H. T.," which is now hidden by the wooden front, and point out any such peculiarities above described, if you find any.

(Objected to as previously stated, and also because witness has been previously examined to the same point.)

189 Ans. Holding the pattern in my hand by the heel-end, journal end up, there will be seen peculiarities near the face of the flange projecting from the journal towards the front; I refer to the distances between the edges of the pattern and the edges of the ribs, this distance being on the right-hand side, and near the bottom of the flange alluded to, nearly a sixteenth of an inch wider than it appears on the left-hand side, and for a distance of two inches from that flange, the space on the right-hand side between the edge of the pattern and its adjacent rib is wider than it is on the left-hand side. Then on the left-hand side of the pattern, at notches at the end of the cross-head ways, the rib is wider than the rib on the right-hand at the corresponding point. This pattern was evidently made by a poor workman, and though intended to be symmetrical, is not so. The calipers applied to the bars or the pieces on each side of the centre-rod slot (I don't mean the little ribs thereon) show that the right-hand bar (the pattern being held as before) is narrowest throughout its length. At about the centre of the cross-heads ways the rib on the right-hand side is considerably wider than it is on the left-hand side, the right-hand rib at the lower end of the cross-head ways is almost a sixteenth of an inch wider than the other rib at the corresponding part. The upper end of the notch at the end of the cross-head ways on the right-hand side is nearer any central fixed point near the foot part than the upper end of the left-hand notch by nearly a sixteenth of an inch. The right-hand cross-head way is narrower than the left-hand cross-head way. At the flanges where they join the foot part of the pattern the width between them and the edges of the pattern is exactly the reverse of the measurements I have given near the journal end, for here at the foot part the widest space is on the left-hand side, while at the journal end the widest space is on the right-hand.

Int. 11. Now, if you should find a casting which agreed with that of the pattern "Lewis No. 2," in all its measurements, making the proper allowances for shrink and rapping, and in which were reproduced all those peculiarities, what would be your opinion on the ques-

tion whether that casting was taken from that pattern, and how strong would that opinion be?

(Objected to.)

Ans. I should have no doubt that the casting was taken from the pattern.

190 Int. 12. Now suppose certain other parts of the same casting differed so much from the pattern that it was plain that those parts of that casting could not have been taken from the pattern; how would that affect your opinion?

(Objected to.)

Ans. Finding the same peculiarities as before, and also finding differences between the pattern and the casting, I should then say still that the casting was taken from the pattern when in a condition modified from that in which it was presented to me. I should have no doubt about it. The finding of the differences would show me, of course, that the pattern had been changed, but the finding of the peculiarities would show me that the pattern was used with such changes as I might find existing in the casting.

Int. 13. State which of the peculiarities mentioned you can find in the casting of the tree marked "No. 1, C. H. T.," as it now is, with the front upon it.

(Objected to because examined before on same point, and for other reasons.)

Ans. Without removing the front, I have taken the measurement of the width of the bars on each side of the stretching-rod, and find the same differences in width which exist in the pattern. I have before said that the most instructive and peculiar part of the casting is that which is covered by the wooden front, which I cannot see to make comparisons.

Int. 14. You have found certain differences between the pattern "Lewis No. 2," and the casting of "No. 1, C. H. T.," which you have attributed to the enlargement of the mould by rapping the pattern, and the shrink of the metal. Are these differences necessary or accidental, and if they did not exist, but you found the centre-piece casting of "No. 1, C. H. T.," to conform exactly in all its dimensions with "Pattern Lewis No. 2," what would be your opinion on the question whether that casting was taken from that pattern?

(Objected to.)

Ans. The differences are necessary, not accidental, and if I should find a boot-tree casting exactly corresponding with any given pattern, I should then know that such a casting could not have been taken from that pattern, and I have no doubt on either of these points.

(Solicitor for complainant here makes the same request in regard to tree marked "Rice No. 3, G. D. N.," as in the deposition
191 of Mr. Howe and Mr. Field, witnesses for complainant, which is respectfully declined as before by solicitor for defendant.)

Int. 15. Compare the "Pattern Lewis No. 2" with the centre-piece casting of tree marked "Leland, N. A. P.," especially as to

the differences which you have said were attributable to rapping the pattern and shrink of the metal, and state whether you find those differences between the pattern and the casting, or not.

(Objected to as above.)

Ans. I find all the differences here between the casting and pattern referred to, occasioned by rapping the pattern and shrinkage of the iron; for example, the space which receives the wooden front is about five thirty-seconds of an inch longer in the pattern than in the casting, and that space in this casting is just a shade shorter than in the casting of Exhibit No. 1, C. H. T.;" say one one-hundreth of an inch, and so with all the others.

Int. 16. Now compare the pattern with the casting of "Leland, N. A. P.," especially as to the peculiarities mentioned in your tenth answer, and state how they agree or differ in those respects.

(Objected to as before.)

Ans. The differences in width, first spoken of in my tenth answer, I find in this casting, though not so marked as they are in the pattern, as the casting has been dressed off or filed away on the sides, from the brasses to the journal. The ribs at the notches, or just above them, are not of equal width, the left-hand being wider than the right; and this inequality I find reproduced in the casting. The right-hand rib, at the lower part of the cross-head ways, is nearly one-sixteenth of an inch wider than the left-hand rib at a corresponding place. This peculiarity also exists in the pattern in the same place. The difference I noticed in the pattern between the width of the side bars, exists in this casting, though not so perceptibly as in the pattern, the presence of the brasses making some discrepancy in the measurements. At the middle of the cross-head ways on the casting, the right rib is wider than the left, and this distinction between the right and left ribs increases towards the lower ends, which peculiarity plainly exists in the pattern. The peculiarity which I noticed with regard to the upper ends of the notches in the pattern exists in this casting; and the width of the metal
192 outside of the ribs near the foot part is wider on the left than on the right-hand, corresponding with the same peculiarity in the pattern. The rib on the left-hand, at about or a little above the centre of the cross-head ways, is not so round and full as the right-hand rib. The left-hand rib seems higher on its outer than on its inner edge. This peculiarity is found both in the pattern and in the casting.

Int. 17. Now please compare "Pattern Lewis No. 4" with centre-piece casting of the tree marked "Howe, N. A. P.," and state whether you find or not the same differences between that pattern and that casting as between "Pattern Lewis No. 2" and the castings in the trees marked "Leland, N. A. P.," and "No. 1, C. H. T." I mean those differences attributable to the shrink of the metal and rapping the casting.

(Objected to as before.)

Ans. I find between those these differences which are due to shrinkage and not the same in proportion to those found between "Lewis No. 2" and the other casting.

Int. 18. Now read again the 35th direct, and answer, and the 37th and 39th cross-interrogatories, and answers, of Mr. Shumway, and state how your opinion is affected, if at all, by such differences there set forth as you know to exist on the question of whether the centre-piece castings of the trees marked "No. 1, C. H. T.," and "Leland, N. A. P.," were taken from the pattern marked "Lewis No. 2."

(Objected to as before.)

Ans. I have heard the testimony of Mr. Shumway, so far as referred to in the question, read, and do not find any reason to change the opinion I have given. Some of Mr. Shumway's measurements are not accurate—some of the differences which he remarks are occasioned by finishing or filing off metal from the casting. Others are attributable to shrinkage of the metal and to rapping the pattern, and others to alterations in the pattern itself.

Int. 19. When you testified before, your comparison of the casting of the tree marked "Howe, N. A. P.," and the "Pattern Lewis No. 4," was shortened by an admission of Mr. Shumway that that casting was taken from that pattern, (which admission has been since stricken from the record by consent.) Please examine the two exhibits again carefully, and state what your opinion is as to whether
193 that centre-piece casting was made from that pattern as it now is, or whether it has been altered in any way since that casting was taken from it; if such is the fact, and if you find any differences, state to what they are attributable.

(Objected to because there is no admission of Mr. Shumway that that casting was taken from that pattern, and because it does not appear that any such admission was stricken from the record, and because witness does not know what the fact referred to in the question is, and also for reasons stated in the previous objections to other interrogatories.)

Ans. I should say that this casting was made from this pattern with one or two slight alterations of the pattern, one at the lower cross-head ways. The casting at the lower end of the wide part of the stretching-rod slot does not correspond exactly with the pattern, for in the pattern the wide part of the slot is about half an inch shorter than it is in the casting. But the difference may have been made either in the core box, or by cutting out that metal with a file. There is a peculiarity in this pattern occasioned by want of good workmanship, wherein the sides of the pattern are not symmetrical; at the foot and the distance between the flange or rib and the side on the right is greater than the distance on the opposite side of the pattern. The same discrepancy is apparent in the casting.

Cross-examination by F. A. Brooks, esq.:

Cross-int. 1. (De bene.) I understand you to testify that all castings vary necessarily from the patterns or models used in producing them, owing to contraction of metal in cooling, and to the manipulation of the pattern or model in removing it from the sand or mould is there any means of forming a correct judgment how far the rap

ping of a pattern in any given case has occurred or operated to vary the casting, unless you know the pattern in fact used and have such pattern as a basis of comparison?

Ans. You are not right in understanding me that all castings vary necessarily from the patterns, owing to contraction of the metal. Such is not the fact in all cases, for in some cases the straining of the mould more than counterbalances the shrinking. Such straining occurs, however, in large heavy castings only, or in castings
194 having a riser or head producing pressure within the mould. My testimony in this case has been directed to such boot-tree castings and boot-tree patterns as I have had before me, and knowing about the size of the pattern, I am enabled to form a correct judgment how far the rapping of the pattern and the shrink of the metal in the mould formed by that pattern would operate to vary the casting from the pattern. Seeing a boot-tree casting alone without seeing the pattern would enable me to tell the dimensions of the pattern from which it was made, or vice versa.

J. B. CROSBY.

195 *Testimony for respondent.*

Deposition of Charles H. Tilton, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Charles H. Tilton; age, 36; reside at Ashland; boot and shoe manufacturer.

Int. 2. Do you know Emory L. Shumway, of Worcester, and how long have you known him?

Ans. I have known him ever since the summer or fall of 1852.

Int. 3. If at any time you procured of E. L. Shumway a boot-tree with shifting backs, said backs being made removable by two incline planes, cut therein to slide upon cross-heads attached to the front of the leg part, please state when you first had such description of boot-tree?

Ans. I had a boot-tree of such description in the fall of 1852. It might have been as late as December of that year, but I think not.

Int. 4. With whom were you in business at that time? when did you commence such business? and when terminate the business connection then existing?

Ans. Abraham Tilton; we commenced in the fall of 1851, and terminated in the fall of 1853. I entered into partnership with Mr. Tilton the day I was married—October 1st, 1851.

Int. 5. During the continuance of that partnership did you have more than one boot-tree of this description, and whether or not you put such boot-tree in use, and kept it in use?

Ans. I did not have but one. It was put in use, but not kept in use all the time. There was a prejudice against it among the
196 workmen, because I charged them a dollar a month for its use. For this reason, I had it removed from the stand, and it was not again used until I went into business for myself in my first new shop.

Int. 6. State what became of the boot-tree after your dissolution of partnership in 1853, the use made of it, and where it now is.

Ans. I took the tree with me into my first new shop, where it was set up and used. It was kept in use more or less as occasion required. It remained in that shop until 1856, when I built another shop, and removed into it and took the tree with me. It was set up and used in the last new shop in October, 1856, and used as occasion required, until last February, when it was taken by Mr. Shumway to be used in this case.

Int. 7. Please look at the boot-tree now shown you in three parts marked "C. H. T., (G. D. N.,") and state whether or not it is the same boot-tree referred to in the foregoing testimony.

Ans. It is the same tree. New backs—that is, new woods for the backs—have been made to fit a different style of boots from what I was making when the tree was first made. The lapping brasses may have been changed, but I can't say whether they have been changed or not. These are precisely like the original ones. I mean that new brasses may have been put on like the old ones. The lasts, or foot parts, have been altered from time to time to suit the styles of boots as they may have changed from time to time.

Int. 8. Whether or not have the working parts been varied otherwise than perhaps by repairs made thereon?

Ans. They have not. I don't recolleet that they have been repaired.

Cross-examined by J. E. Maynadier, esq., solicitor for complainant.

Cross-int. 1. You are positive that you obtained a machine tree in the fall of '52, or early in December?

Ans. I am.

Cross-int. 2. From whom?

Ans. Mr. Shumway.

Cross-int. 3. Where was Mr. Shumway's place of business at that time, if you know?

197 Ans. I think it was at Worcester, but I cannot swear; I never saw him at his place of business till afterwards.

Cross-int. 4. Did you ever get a second tree like the first one? If so, from whom, and how long after you had the first one?

Ans. I did get a second tree in the fall of '53, or winter of '53 or '54, of Mr. Shumway.

Cross-int. 5. Do you know where his place of business was then?

Ans. I do not; I understood it was on the road near Worcester; Shumway came to my shop in both instances.

Cross-int. 6. Was Mr. Shumway then engaged in selling trees?

Ans. He was engaged in selling me mine; he sold me these, and I suppose he was.

Cross-int. 7. How many trees like these did you have when you moved to your second new shop in the fall of 1856?

Ans. Two or three sets.

Cross-int. 8. Rice, Adams, Proctor, and Chickering were em-

ployed by you and Abraham Tilton as treers, and were the only treers employed by that firm, were they not? If not give the names of any others.

Ans. I have no recollection of Rice or Chickering being employed; there were several others employed from time to time; I can't give the names; we were changing constantly.

Cross-int. 9. What treers were employed by you while you were in your first new shop? Give the names of all you recollect.

Ans. Isaac W. Adams, Benjamin Proctor, Wheaton Pike, now dead, Silas Fuller, one McIntire; these are all I recollect now.

Cross-int. 10. Have you books which will show the names of the treers employed in that shop? If so, please draw off a list, and send it to the magistrate as soon as possible.

(Objected to as wholly irrelevant to the matter of this examination, and not rebutting.)

Ans. I have no such books.

Cross-int. 11. Did you never keep such books? If you did, what has become of them?

(Objected to as before.)

198 Ans. I kept such books until last winter in a box, when they were destroyed?

Cross-int. 12. Did you get a bill of the two trees you bought of Mr. Shumway? If so, can you produce that bill?

Ans. I got a bill, but can't produce it; I don't know where it is now; I think it was destroyed with the papers.

Cross-int. 13. Do you recollect the contents of that bill with sufficient clearness to swear to it?

(Objected to as above.)

Ans. I do not.

Cross-int. 14. Can you swear how these trees were designated in those bills?

(Objected to as above.)

Ans. I cannot.

Cross-int. 15. Can you swear that those bills did not designate those trees as brass trees, or Bliss trees?

(Objected to as above.)

Ans. I cannot.

Cross-int. 16. Or as patent trees?

(Objected to as above.)

Ans. I cannot.

Cross-int. 17. What did you pay for those trees?

Ans. I don't recollect.

Cross-int. 18. Will you swear that both of those trees were not what are known among treers as brass, or Bliss, or patent, or iron trees?

(Objected to as irrelevant, and also because it does not appear what is meant thereby.)

Ans. I can only swear what I know them to be.

Cross-int. 19. How did you designate them at the time they were purchased?

Ans. As Shumway's patent boot-tree.

Cross-int. 20. Do you know a tree called among treers the brass, or Bliss, or iron tree?

(Objected to as immaterial.)

Ans. I borrowed of Mr. Shumway, some two years ago, an old tree he called a brass tree; this is all I know of it.

Cross-int. 21. You are entirely confident that the two trees you have testified to are not trees of the kind you borrowed two years ago, are you?

Ans. I am confident they are not.

Cross-int. 22. You are perfectly sure that the tree marked "C. H. T., (G. D. N.") is the identical tree purchased by you in 1852?

199 Ans. I am.

Cross-int. 23. When was that tree paid for, as nearly as you can state?

Ans. I could not say when it was paid for; I think it was about the time I got the second one of that kind.

Cross-int. 24. State, if you please, the reasons for your certainty that the tree marked "C. H. T., (G. D. N.") is the identical tree purchased by you in 1852?

Ans. The reasons are, that I have others of this kind; among my workmen this has always been termed "the old tree;" when it went out of my possession, when Mr. Shumway took it, I put a private mark on it which I now recognize; the mark "No. 1, C. H. T.," was also made by me.

Cross-int. 25. If I understand you, you are willing to testify that you never used a tree like the one you borrowed of Shumway, except that particular one.

(Objected to because immaterial, and because informal, and because it assumes what the witness has not said.)

Ans. I don't recollect ever using a brass tree before or since.

Cross-int. 26. That tree had a toggle joint, didn't it?

(Objected to.)

Ans. I don't know.

Cross-int. 27. You are willing to swear that all the machine trees you ever used before 1860 had mechanism for distending or separating the parts like the mechanism in the tree marked "No. 1, C. H. T.?"

(Objected to as immaterial, and because witness has not testified as to mechanism employed in other boot-trees used by him, if any, except those purchased of Shumway.)

Ans. I am.

Cross-int. 28. Have you purchased any trees from Mr. Shumway since the year 1864? If so, how many, and what sizes?

Ans. I don't think I have; I have no recollection of any.

Cross-int. 29. Are you in business now on your own account, or are you agent or superintendent for any company, firm, or individual?

Ans. I am in business; in partnership with other parties.

Cross-int. 30. Has your firm purchased any trees from Shum-

200 way since 1864, or used in their manufacture of boots any

trees so purchased since 1864? If so, how many, and of what size?
(Objected to.)

Ans. We have not purchased any, nor used any purchased since 1864.

CHARLES H. TILTON.

Deposition of Abraham Tilton, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Abraham Tilton; age, 58; I reside at Ashland; boot and shoe manufacturer.

Int. 2. Please look at the boot-tree now shown you, marked "youth's," and see if you ever used in your business this description of boot-tree with shifting backs; state when you first procured or had in use any such boot-tree, and of whom the same was procured, and what you did with the same.

Ans. I have several of them; the first tree in the shop, C. H. Tilton and I used it together; we were partners at the time; when it was I am unable to say; it was first set up in the shop to be tried, and was tried, and worked pretty well; it was a new thing then, and we used to charge the workmen for the use of it; when we dissolved C. H. Tilton took the tree.

Int. 3. When did you dissolve with C. H. Tilton?

Ans. I think it was in the fall of 1852; he was gone in 1853 to a new shop.

Int. 4. Did he go into business for himself at that time?

Ans. He did.

Int. 5. Of whom was this tree procured; I mean the first one above referred to?

Ans. Of Mr. Shumway.

Int. 6. For how long time, according to your best memory, was this tree set up in the shop while you and C. H. Tilton continued partners, that is, before the dissolution?

201 Ans. That I am not able to say. It was warm weather when it was set up, and it was gone in the fall of 1853. I can't say whether it was in the summer 1852 or 1853 that it was set up.

Int. 7. Did you ever see this tree after it left your shop? and if so, where, and how long did it remain in use? and where is it now?

Ans. I saw it in C. H. Tilton's shop; but how long it remained there I am unable to say. He made constant use of it after it was set up in his new shop.

Int. 8. When first did you learn that any person except Mr. Shumway claimed to be the inventor of this kind of boot-tree with the shifting backs?

(Objected to.)

Ans. That I am not able to say. I should think it was some four

or five years ago I heard that some one had a claim on the trees Mr. Eames was making at the time. I never heard of Mr. Lewis's claim until I am now informed that the present suit is based on Mr. Lewis's claim.

Cross-examined by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. What was the tree got in 1852 or '53 called, if you know, among the treers?

Ans. We used to call it the patent tree.

Cross-int. 2. Were there any other trees like it in Ashland at that time; I mean in '52 or '53?

Ans. Not to my knowledge.

Cross-int. 3. How long was it after you got your tree before these trees became generally in use at Ashland?

Ans. Well, they kept coming in gradually. I could not say when they came into general use. It was three or four years before I used them altogether. I could not say how it was with other manufacturers.

Cross-int. 4. Did you get any more before the year 1854?

Ans. I don't think I did. But I can't say as to the time when I got them.

Cross-int. 5. What men worked for you in '52, 53, and 54?

202 Ans. There was a Mr. Charles M. Hartshorn, and a Mr. Proctor. There were several others; but their names I don't recollect.

ABRAHAM TILTON.

Deposition of Calvin Barber, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. Calvin Barber; age 57; reside at Worcester; engaged in manufacturing boots.

Int. 2. Please look at boot-tree marked "Youths', G. D. N.," now shown you, also at "No. 1, C. H. T.," and "No. 3, Rice," all with shifting backs, and state when you first owned such a boot-tree, and of whom you procured the same.

Ans. In March, 1853, I procured one of E. L. Shumway.

Int. 3. What use was made of said tree by you? where was it used? and what became of it?

Ans.

(Objected to as not in reply, but as cumulative.)

Ans. I treed boots with it at Hopkinton, Mass. I sold it to a man in Hopkinton, I think to one Reuben Smith, between Jan. 1st, and April 1st, 1854, as near as I recollect.

Int. 4. In what way have you been able to fix the date or time of first getting this description of boot-tree of Mr. Shumway? Have you taken pains to ascertain such dates accurately?

Ans. By referring to my books that I kept at that time. I have taken pains to look at my books to see if I was mistaken in my recollection.

Int. 5. Whether or not the examination of your books confirmed your recollection as to the time or otherwise?

Ans. It did.

Int. 6. After selling your first shifting back tree to Smith, did you afterwards see it, or know what became of it, or know where it now is?

Ans. No.

203 Int. 7. Whether or not you have had, since that time, and employed in your business boot-trees of the same construction?

Ans. Yes, sir.

Cross-examination, de bene, by J. E. Maynadier, esq., counsel for complainant.

Cross-int. 1. How does the entry in your books read? State as nearly as you recollect.

Ans. One entry reads "1853, March 21st, L. Shumway, Cr. by one patent tree or boot-tree, $50." I am not entirely sure of the language, but that is the substance of it.

Cross-int. 2. How many other entries are there in relation to boot-trees, and how do they read, if you recollect?

Ans. I think there are three others. One is the same date on the cash account. I find there, "cash paid to Holmes's expressman for bringing trees from Shumway to me, .38." The 12th day of July, I find charged to Shumway $50 to balance the price of the tree. I find the same date, on my cash account, "paid L. Shumway, $50 for tree delivered to Holmes's expressman."

Cross-int. 3. After March, 1853, did you buy any other trees of any kind, of Mr. Shumway, up to 1856?

Ans. I did not. I have no recollection of buying any.

Cross-int. 4. In March, 1853, where did you carry on your boot manufacture, and what kind and how many trees did you then use?

Ans. At Hopkinton, Mass. I used two sets. One, the tree I had of Mr. Shumway, and the other was an old slide tree.

Cross-int. 5. What kind of trees were the manufacturers in Hopkinton then using?

(Objected to as immaterial.)

Ans. I could not say.

Cross-int. 6. Had you ever seen any tree like the one you bought of Shumway in '53 except that, before you saw that?

Ans. I could not recollect whether I had or not.

Cross-int. 7. Before 1856, what kinds of trees had you used?

Ans. The old-style slide-tree, the brass tree, the Eames tree, the Lewis tree, besides the one I had of Shumway.

204 Cross-int. 8. Please describe generally what you mean by Lewis tree?

(Objected to as immaterial.)

Ans. A tree with changeable back he made there in Milford. I never examined them particularly, but it strikes me the Lewis tree had but one incline plane. I can't be positive.

or five years ago I heard that some one had a claim on the trees Mr. Eames was making at the time. I never heard of Mr. Lewis's claim until I am now informed that the present suit is based on Mr. Lewis's claim.

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Cross-int. 1. What was the tree got in 1852 or '53 called, if you know, among the treers?

Ans. We used to call it the patent tree.

Cross-int. 2. Were there any other trees like it in Ashland at that time; I mean in '52 or '53?

Ans. Not to my knowledge.

Cross-int. 3. How long was it after you got your tree before these trees became generally in use at Ashland?

Ans. Well, they kept coming in gradually. I could not say when they came into general use. It was three or four years before I used them altogether. I could not say how it was with other manufacturers.

Cross-int. 4. Did you get any more before the year 1854?

Ans. I don't think I did. But I can't say as to the time when I got them.

Cross-int. 5. What men worked for you in '52, 53, and 54?

202 Ans. There was a Mr. Charles M. Hartshorn, and a Mr. Proctor. There were several others; but their names I don't recollect.

ABRAHAM TILTON.

Deposition of Calvin Barber, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. Calvin Barber; age 57; reside at Worcester; engaged in manufacturing boots.

Int. 2. Please look at boot-tree marked "Youths', G. D. N.," now shown you, also at "No. 1, C. H. T.," and "No. 3, Rice," all with shifting backs, and state when you first owned such a boot-tree, and of whom you procured the same.

Ans. In March, 1853, I procured one of E. L. Shumway.

Int. 3. What use was made of said tree by you? where was it used? and what became of it?

Ans.

(Objected to as not in reply, but as cumulative.)

Ans. I treed boots with it at Hopkinton, Mass. I sold it to a man in Hopkinton, I think to one Reuben Smith, between Jan. 1st, and April 1st, 1854, as near as I recollect.

Int. 4. In what way have you been able to fix the date or time of first getting this description of boot-tree of Mr. Shumway? Have you taken pains to ascertain such dates accurately?

Ans. By referring to my books that I kept at that time. I have taken pains to look at my books to see if I was mistaken in my recollection.

Int. 5. Whether or not the examination of your books confirmed your recollection as to the time or otherwise?

Ans. It did.

Int. 6. After selling your first shifting back tree to Smith, did you afterwards see it, or know what became of it, or know where it now is?

Ans. No.

203 Int. 7. Whether or not you have had, since that time, and employed in your business boot-trees of the same construction?

Ans. Yes, sir.

Cross-examination, de bene, by J. E. Maynadier, esq., counsel for complainant.

Cross-int. 1. How does the entry in your books read? State as nearly as you recollect.

Ans. One entry reads "1853, March 21st, L. Shumway, Cr. by one patent tree or boot-tree, $50." I am not entirely sure of the language, but that is the substance of it.

Cross-int. 2. How many other entries are there in relation to boot-trees, and how do they read, if you recollect?

Ans. I think there are three others. One is the same date on the cash account. I find there, "cash paid to Holmes's expressman for bringing trees from Shumway to me, .38." The 12th day of July, I find charged to Shumway $50 to balance the price of the tree. I find the same date, on my cash account, "paid L. Shumway, $50 for tree delivered to Holmes's expressman."

Cross-int. 3. After March, 1853, did you buy any other trees of any kind, of Mr. Shumway, up to 1856?

Ans. I did not. I have no recollection of buying any.

Cross-int. 4. In March, 1853, where did you carry on your boot manufacture, and what kind and how many trees did you then use?

Ans. At Hopkinton, Mass. I used two sets. One, the tree I had of Mr. Shumway, and the other was an old slide tree.

Cross-int. 5. What kind of trees were the manufacturers in Hopkinton then using?

(Objected to as immaterial.)

Ans. I could not say.

Cross-int. 6. Had you ever seen any tree like the one you bought of Shumway in '53 except that, before you saw that?

Ans. I could not recollect whether I had or not.

Cross-int. 7. Before 1856, what kinds of trees had you used?

Ans. The old-style slide-tree, the brass tree, the Eames tree, the Lewis tree, besides the one I had of Shumway.

204 Cross-int. 8. Please describe generally what you mean by Lewis tree?

(Objected to as immaterial.)

Ans. A tree with changeable back he made there in Milford. I never examined them particularly, but it strikes me the Lewis tree had but one incline plane. I can't be positive.

Cross-int. 9. Did you order the tree yourself which you bought in March, 1853? If so, from whom, and where?

Ans. I did, from Mr. Shumway, of Worcester.

Cross-int. 10. Where was Mr. Shumway's place of business then, or where was he when you ordered the tree?

Ans. At his shop in Merrifield's building, on Union street.

Cross-int. 11. Was he then a manufacturer of trees? and if so, did you see any or parts of any in his shop?

Ans. He was. I saw parts of trees he was making.

Cross-int. 12. What kind of trees was he then making?

Ans. He had some under way of the same kind that I ordered.

Cross-int. 13. Was he the only man who worked in that shop? I mean the room or rooms where you saw these parts of trees.

Ans. I think there were others to work in the room with him.

Cross-int. 14. Do you know whether he then occupied more than one room in that room in that building, or did you go into more than one room where you saw parts of trees?

Ans. I don't know whether he occupied more than one room or not. I have no recollection of going into but one.

Cross-int. 15. Do you know whether Shumway was then manufacturing any other kinds of trees, or did you see in his shop any other trees, or parts of any other kind?

Ans. I do not. Without taking particular notice, I might have seen other kinds or parts. There was nothing else that I was looking for, except what I ordered. I did not take any particular notice of anything else.

Cross-int. 16. How long were you at Hopkinton after March, 1853? and where did you move from Hopkinton?

Ans. As near as I recollect about a year. I moved to Milford.

Cross-int. 17. What kinds of trees did you use at Milford?

Ans. I think we used all the different kinds I ever knew anything about. We had them in the shop.

205 Cross-int. 18. Can you state how many trees were used in that shop at Milford, and how many of each kind?

(Objected to as immaterial.)

Ans. As near as I can recollect now some twelve or fifteen in all. I think we had four of what we used to call the old brass tree—sometimes it was called the Bliss and Howe. Then we had six or eight changeable back trees; and there might have been two or three of the old slide trees. I don't mean to be positive about the exact number.

Cross-int. 19. Can you state about what time you moved to Milford, and in whose manufactory you were employed there?

Ans. I think I moved to Milford in the spring of 1854. Dennis Eames and I bought out Comstock, and took the shop he had occupied.

Cross-int. 20. What became of the trees which you bought from Comstock?

(Objected to as immaterial.)

Ans. When Dennis Eames and I dissolved copartnership, we

divided the trees and everything we had. I don't know what became of his after that. Mine, I sold some, and have got some now.

Cross-int. 21. Did your share include any brass trees? If so, how many, and what did you do with them?

Ans. It did; two. I sold one to Mr. Howe, the plaintiff, and have the other now.

Cross-int. 22. Do you know who made these brass trees?

Ans. I do not.

Cross-int. 23. When did you and Eames dissolve?

(Objected to as immaterial.)

Ans. As near as I can recollect it was in the fore part of '55. I could not say as to the month.

Cross-int. 24. Where did you go then?

Ans. I continued business in the same shop. I took one part and he the other.

Cross-int. 25. I infer from your testimony that you had these twelve or fifteen trees of various kinds when you first bought Comstock out. Am I right?

(Objected to as immaterial.)

Ans. We bought them of him when we bought him out.

Cross-int. 26. Did you afterwards buy other trees for use in
206 that shop? If so, how many, and what kind? I wish to confine the question to what trees you bought, if any, prior to the time you dissolved with Eames.

Ans. I don't recollect whether we bought any new ones or not.

Cross-int. 27. I understand from your 17th answer that a part of the trees you and Eames bought of Comstock were of Shumway's, and Charles Eames's, and Lewis's make; am I right?

(Objected to, first, because immaterial; secondly, because witness did not indicate that the different styles of trees, indicated in his former answer, were made by any particular person.)

Ans. You are not right. I did not mean to be so understood. I did not mean to be understood that they were of any particular man's make, but that they were of all the different kinds with which I was acquainted.

Cross-int. 28. Do you mean to be understood that the trees you bought of Comstock embraced all the different kinds embraced in your 7th cross-answer? I do not mean to inquire as to who made them, in fact, but only as to the kind of tree.

(Objected to as immaterial, and because it asks the witness to answer one question with reference to the answer given to another question, and so is calculated to confuse the meaning.)

Ans. I think they did.

Cross-int. 29. Please state, if you know, where Mr. Reuben Smith now is.

Ans. I don't know.

CALVIN BARBER.

Deposition of John M. Fales, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your age, residence, and occupation?

Ans. My name is John M. Fales; 61 years of age; reside at West Brookfield; boot manufacturer.

Int. 2. If you ever purchased or procured of E. L. Shumway, of Worcester, a boot-tree with shifting backs of the same construction with that now before you marked "No. 1, C. H. T.," state
207 when first you had such boot-tree, what use you made of it, and where it now is.

Ans. I had one like it of Shumway, in July, 1853. I used it for treeing boots; I put it in use at the time I got it, and it has been in use ever since. It is now in my shop at West Brookfield.

Int. 3. How are you able to fix July, 1853, as the time when you purchased this boot-tree of Mr. Shumway?

Ans. I have a bill of the tree.

Int. 4. Please produce the bill or receipt, and let the same be annexed to your deposition.

(Witness produces bill or receipt, and the same is marked "Fales, G. D. N.," and is hereto annexed.)

Cross-examination by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. Did you ever use brass or Bliss trees?

(Objected to as new matter, and immaterial.)

Ans. I don't know what you mean by brass or bliss trees.

JOHN M. FALES.

"*Fales, G. D. N.*"

WORCESTER, *Sept. 12th*, '53.

Mr. J. M. FALES,

To E. L. SHUMWAY, Dr.

July 28th. To one set men's patent boot trees with six pairs of feet..... $52 50

Received pay.,

Sept. 14. E. L. SHUMWAY.

Deposition of Charles Fales, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Charles Fales; age, 59; reside at Brookfield; occupation, boot and shoe manufacturer.

208 Int. 2. If you ever purchased or procured of E. L. Shumway a new kind of boot-tree like the model now before you, marked "C. H. T.," state when you first had such tree, and what was done with it.

Ans. I bought one like that in 1853, of E. L. Shumway. I used it until it was nearly worn out, and then I swopped it for another like it.

Int. 3. Did you put it in use soon after buying it? And how long did it last you?

Ans. I put it in use immediately. It lasted some years; it was used constantly as occasion required.

Int. 4. How do you fix the time of procuring this boot-tree of Mr. Shumway?

Ans. I know I bought it before I hired Mr. Gibson—James M. Gibson; I hired him in the spring of 1854. This was before he went to Westborough. He came in the spring of 1854, and treed 3 or 4 cases, and then went to Westborough, to Mr. Newton's, as he told me. I find on my books where I paid him in the spring of '54. Afterwards, Mr. Gibson came to work for me again in the spring of 1855.

Cross-examination by J. E. Maynadier, esq., solicitor for plaintiff:

Cross. int. 1. Have you given an affidavit in this case?

Ans. Yes, sir.

Cross-int. 2. Do you recollect how you fixed the date of the purchase of that tree in that affidavit?

Ans. I don't recollect exactly; I think I fixed the date by having bought the tree before the fire which burned Merrifield's building.

Cross-int. 3. When was your shop in Brookfield burned?

(Objected to as immaterial.)

Ans. In February, 1855.

Cross-int. 4. When was your new shop built?

(Objected to as above.)

Ans. In the spring of 1855.

Cross-int. 5. Didn't you buy a tree from Shumway shortly after your new shop was built?

Ans. Yes, sir.

Cross-int. 6. That tree was a wooden-back tree, wasn't it?

209 Ans. It was. It was not like "C. H. T.;" it spread both back and front, had inclines and cross-heads both back and front; I can't say how many, or whether like those in "Exhibit C. H. T."

Cross-int. 7. Was there anything about the working of this tree which enables you to say that it opened both back and front?

(Objected to as above, and that the witness has already so stated.)

Ans. It showed the mark of the brass on the front part of the boot.

Cross-int. 8. In your affidavit you say you built a boot and shoe shop in Brookfield, and know that you bought the tree of Shumway soon after; what did you refer to?

(Objected to as above, and because not rebutting.)

Ans. I mean the shop burned in 1855.

Cross-int. 9. Did you consider the tree which spread both back and front better than any tree you had previously had?

Ans. I did not.

Cross-int. 10. What made you buy that tree?

(Object to as immaterial.)

Ans. Because Shumway said it was better than the other; but it did not prove so, when I got it to work.

Cross-int. 11. Did you buy two trees of Lucius T. Hobbs in the year 1855? If so, what part of that year, and what kind were they?

Ans. I bought a boy's and youth's tree of him, or had to take them of him; I don't recollect what year, it was either '54 or '55. They were what is called the brass tree.

Cross-int. 12. Do you know when trees like "Exhibit C. H. T." came to be commonly used in Brookfield?

Ans. I do not.

C. FALES.

Deposition of Andrew Morgan, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. Andrew Morgan; age, 40; reside at Brookfield; boot-treer.

210 Int. 2. Where were you in the year 1853, and where was E. L. Shumway at that time, and how occupied, if you know?

Ans. I was at Worcester. Mr. Shumway was there also, in Merrifield's building on Union street, engaged in manufacturing boot-trees.

Int. 3. Please look at the boot-tree marked "No. 1, C. H. T.," (in three parts,) with shifting backs, and state when you first had any knowledge of a boot-tree of this description, and what transactions, if any, you had with Mr. Shumway in regard to such boot-tree.

Ans. I bought a tree of that description of Mr. Shumway in the fall of 1853.

Int. 4. What use, if any, was made of that tree, and what became of it?

Ans. I took the tree and used it, tried it, and he took it back. I used the tree some six weeks treeing boots at my shop.

Int. 5. Was this boot-tree satisfactory to you; that is, did it answer its purpose?

Ans. Yes, sir; it did.

Int. 6. How do you fix the fall of 1853 as the time when you purchased this boot-tree of Shumway?

Ans. Mr. Shumway was in Merrifield's building in 1853; when the fire took place that building was burned, and the great fire I refer to took place in June following.

Cross-examined by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. You are perfectly confident that the tree you refer to was like the one marked "No. 1, C. H. T.," are you?

Ans. Yes, sir.

Cross-int. 2. Are you familiar with the old brass or Bliss tree?

Ans. I have seen them.

Cross-int. 3. Did you ever use one?

Ans. I have.

Cross-int. 4. To what extent have you used them?

Ans. I used one some three months.

Cross-int. 5. Now you are entirely sure that the tree you bought of Shumway, above referred to, was not a brass or Bliss tree,
211 are you? And you are willing to swear to it, are you?

(Objected to on the ground that it does not appear that he did not buy both trees.)

Ans. It was not. I am willing to swear it was not.

Cross-int. 6. You are willing to swear, also, that that tree had wooden backs, and not metal backs, are you?

Ans. Yes, sir.

Cross-int. 7. Was that the first tree you ever saw with shifting backs?

Ans. It was.

Cross-int. 8. Where did you use that tree?

Ans. At E. H. Bowen's shop, Worcester.

Cross-int. 9. Where was that shop, and who worked there at that time? Give the names of all you recollect.

Ans. The shop was near the Junction, near the Stone shop, so called. It was right behind Bowen's house on Taylor street, near Main street. George H. Smith, foreman; one Keach, Chauncey Sweetzer, Joseph Billings, Zemodiah Wheeler, Charles D. Smith, Nathan Alexander. There were several others whose names I don't recollect.

Cross-int. 10. Now tell us where those men now are, if you know.

Ans. Smith went to Hudson, N. Y., some two years ago; that was the last I have known of him. Keach is dead, Alexander is dead, Billings is dead. Wheeler went to Vermont; C. D. Smith is now in Brookfield; don't know where Sweetzer is.

Cross-int. 11. Why was that tree returned to Shumway?

Ans. Because the boss did not want to pay for it.

Cross-int. 12. What kind of trees were used in that shop before you got that tree, and what kind did you use after it was returned, and what other trees were in use there while it was there?

Ans. Slide trees.

Cross-int. 13. You say Shumway was then in Merrifield's building manufacturing trees. What kind of trees was he manufacturing?

Ans. This kind; like "Exhibit C. H. T."

Cross-int. 14. Were you ever in his shop about that time?

Ans. Yes, sir; several times.

Cross-int. 15. Was the tree you had the only one you saw, or did Shumway have one or more on hand in his shop?

212 Ans. There were other trees in process of making; I saw two or three. I think there was one or two finished.

Cross-int. 16. Do you mean that these two or three and one or two were like "Exhibit C. H. T.?"

Ans. Yes, sir; like this tree ("C. H. T.")

Cross-int. 17. Have you any doubts about that?

Ans. No, sir.

Cross-int. 18. Did you see in that shop any brass trees either finished or being made, at those times?

Ans. I did not.

Cross-int. 19. Tell us as exactly as possible in what part of the building that shop was.

Ans. It was in the wing on Union street. It was up one flight, on the second floor, I think.

Cross-int. 20. Do you know who were employed there by Shumway at that time, or any man who worked in Shumway's shop?

Ans. I do not.

Cross-int. 21. How many rooms did Shumway occupy, if you know, at that time?

Ans. I went into only one.

Cross-int. 22. How long had you been a treer at that time?

Ans. About nine years.

Cross-int. 23. What trees were generally in use, if you know, up to that time?

Ans. Slide trees mostly. There were some of the old brass trees used.

Cross-int. 24. When did shifting-back trees come into use generally, so far as you know?

Ans. About the fall of 1853 they commenced making them, about that time they were used in shops. In '53 and '54 they were generally used. There were one or two trees in shops in Worcester and neighboring towns.

Cross-int. 25. Did you ever see a tree having four inclines and cross-heads, two in front and two in the back?

Ans. Not that I know of.

ANDREW MORGAN.

213 Deposition of C. B. Nelson, taken, subscribed, and sworn to, before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. C. B. Nelson; am 43 years old; reside at Hopkinton; I am now a saloon keeper.

Int. 2. Please look at the boot-tree here present marked "youth's," having shifting backs, combined with the front by means of two inclines and cross-heads, and state when and where such boot-trees were first used to your knowledge, and by whom?

Ans. The first I ever saw in operation of this kind was in Otis Newton's shop, at Westborough. I had seen them before in Mr. Shumway's shop. They were first used in Mr. Newton's shop in 1854—in the spring of 1854. I could not give exactly the date. Mr. Newton had a man's tree and a boy's tree, I think, at first.

Int. 3. How long were the trees which first came to Mr. Newton's shop continued in use in said shop, or what become of them?

Ans. I could not tell how long. I worked there till the summer of 1856, and they were up to that time. After coming there, they were used all the time until I left.

Cross-examination by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. How do you fix the date when these two trees first came to Mr. Newton's shop?

Ans. I have referred back to the record of my marriage. I was married Jan. 25th, 1852; and this new shop was built, and we moved into it two years from that spring. The trees were used perhaps a month after we got into the shop. I can't tell exactly how long after; it might have been two months.

Cross-int. 2. Did Mr. Merrick F. Otis tree on that man's tree?

Ans. He did not when it first came there. I could not say that Mr. Otis ever used it. When it first came my brother treed on it.

Cross-int. 3. That tree had four inclined planes, didn't it?

Ans. It did not.

214 Cross-int. 4. Didn't Mr. Newton have a man's tree with shifting backs, which did have four inclined planes and four cross-heads—two in front and two in the back?

Ans. He did.

Cross-int. 5. Before or after he got the two trees?

Ans. After. I could not say whether in 1854 or 1855.

Cross-int. 6. Did he get this tree from Mr. Shumway?

Ans. I think he did. Either of Shumway or Lewis; they were together then, I think.

Cross-int. 7. Was Mr. Robert Woodman employed there in 1853, 1854, and 1855?

Ans. He was there. He was there in 1853 and 1854; a part of 1854, perhaps all. I am not positive.

Cross-int. 8. Are you positive that Mr. Newton got the four-inclined tree after he got the two-inclined trees?

Ans. I am positive he did. I mean to be understood that Mr. Newton got the two-incline trees in the spring of 1854. And he got the four-incline tree in the fall of 1854 or 1855, I cannot say which.

Cross-int. 9. Are you positive that he got his four-incline tree in the fall?

Ans. I could not say whether it was in the fall or winter.

Cross-int. 10. Isn't it true that Mr. Newton got his first four-incline tree from Shumway & Lewis in the winter of 1854, and his two-incline trees in the following spring or summer?

(Objected to because already answered by the witness to the contrary.)

Ans. It is not.

Cross-int. 11. When you say that Mr. Newton may have got his four-incline tree in the winter of 1854, what month do you mean?

(Objected to because the witness has not testified as is suggested.)

Ans. I have not said that he got any four-incline plane tree in the winter of 1854.

Cross-int. 12. When did he get the four-incline tree as nearly as you recollect?

(Objected to as already answered, and as irrelevant.)

Ans. The nearest I can recollect is the winter of 1855. It might possibly have been the fall of 1854.

Cross-int. 13. You are still positive, then, that Mr. Newton got his two-incline trees in the spring of 1854?

215 Ans. I am.

Cross-int. 14. And you are also positive that he got the four-incline tree afterwards?

Ans. I am.

C. B. NELSON.

Deposition of Merrick F. Otis, taken, subscribed, and sworn to, before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Merrick F. Otis; age, 39; reside at Westboro'; boot-treer by occupation.

Int. 2. If at any time or times you were employed by Otis Newton, the defendant in this case, in manufacturing boots and shoes, at Westboro', Mass., state when you were so employed, and for how long at each time.

Ans. I was there in 1854, part of August and a part or the whole of September; possibly I was there a part of October; I should think eight or ten weeks in all. I was again there in the spring of 1855, about March I commenced—it might have been a little before—and worked until July or August.

Int. 3. Whether or not, when you were employed by the defendant in 1854, as above stated, had he in use, at his shop, a boot-tree constructed like "Exhibit No. 1, C. H. T.," now before you, and what kind of boot-trees had he at that time?

(First clause objected to as leading.)

Ans. He had three different kinds; the old wooden slide tree, the patent brass tree, and I think he had one or two of this kind like "Exhibit C. H. T.." only men's size. "Exhibit C. H. T." is boys' size.

Int. 4. What kind of boot-trees were in use in the defendant's shop when you were there in 1855, and how many of each kind, as nearly as you remember?

Ans. The two patent kinds were used then; I think the old
216 slide trees had gone by. One kind was like this "C. H. T.," the other was the old brass tree, sometimes called the Howe or Bliss tree. Mr. Newton had a tree there, for a short time, with four planes, the back and front being on inclined planes. I worked on it part of the time. They used to call the tree with four inclines the Shumway & Lewis tree. This is all the name we knew it by, and did not want to know any.

Int. 5. By what name, if you know, was the boot-tree with shifting backs, like "Exhibit C. H. T.," which you say was in use in Newton's shop in 1854, known or called, and by whom was the same made or sold, if you know?

Ans. We always called them the Shumway tree. He made them. He might have had a partner, for all I know. We always went to his shop for them. I did, any way.

Int. 6. How many of these Shumway trees were in use in Newton's shop in the fall of 1854, and how many so in use in the spring of 1855, as near as you recollect?

Ans. In 1854 there were only two boot-trees, men's size, in use there. In 1855, in addition to the others, he got a boy's and youth's tree of this kind, I rather think; there might have been more.

Int. 7. What became of the single boot-tree with four incline planes, called the Shumway & Lewis, which you say was in Mr. Newton's shop in the spring of 1855?

Ans. It was changed off for a two-incline plane tree about the time I worked upon it and broke it, in the fore part of the spring, I think.

Int. 8. Do you mean it was exchanged for a boot-tree of Shumway's manufacture, like the "Exhibit C. H. T." in construction?

(Objected to as leading.)

Ans. It was exchanged for one of Shumway's trees; one of the patterns like "C. H. T." I could not say whether it was a man's or boy's size.

Int. 9. In what way have you been able to fix the date of times at which you were employed by Mr. Newton, as above stated?

Ans. I don't know that I have any way of fixing a regular date to a day or week. I know by the hands who worked in the shop
217 with me, and other circumstances. I also saw Mr. Newton's books for the purpose of fixing the dates.

Int. 10. Whether or not you have any doubt that the times of your being employed by Mr. Newton, as above stated, are correct?

Ans. I have no doubt of it at all, now.

Cross-examination by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. In your affidavit in this case, you state that the four-incline tree which Mr. Newton had "was the first changeable back tree that I ever saw, and I think it was the first changeable back tree that ever came into town." Please state what has led you to change your opinion as to this?

(Objected to.)

Ans. I have no recollection of making that statement in the affidavit, still I might have made it. These two times of working for Mr. Newton got rather mixed up in my mind at that time. I am satisfied that I was wrong at that time.

Cross-int. 2. How positive are you now that Mr. Newton had two trees with changeable backs before he got the four-incline tree?

Ans. It is my impression he had them, and I might say it is a strong one.

Cross-int. 3. Mr. Shumway had seen you and talked with you about the trees Mr. Newton had in 1854, before Mr. Howe and I talked with you, before you gave your affidavit, hadn't he?

Ans. I don't think Mr. Shumway and I ever had one word of conversation on the subject prior to that time.

Cross-int. 4. Since that time you have had talk with Mr. Shumway have you not; about the matter of trees, I mean.

Ans. I don't know that I ever had any direct conversation with

him on the matter. As I have met Mr. Shumway and Mr. Howe, I have asked each of them how they got along with their case.

Cross-int. 5. Do you recollect, sir, that on the occasion of giving your affidavit, I examined you quite carefully to see what your recollection was as to what trees Mr. Newton had when you first worked for him? Now, since that time, has not Mr. Shumway asked
218 you any question on that point; I mean as to what trees Mr. Newton had when you first worked for him?

Ans. I don't know that he has asked me a question as to what trees Mr. Newton then had.

Cross-int. 6. What satisfaction did that four-incline tree give?

Ans. Not good.

Direct examination resumed:

Int. 11. You have been interrogated by the plaintiff in regard to a certain affidavit given by you, at his request, early in this case, to aid him in his motion for a preliminary injunction. Did you or not, after giving such affidavit, become satisfied that an error as to time had been made by you therein; and what did you do for the purpose of correcting such error, if any?

Ans. I was satisfied there was an error, and I wrote to Mr. Howe to that effect.

Int. 12. How soon after giving the affidavit did you inform Mr. Howe that you thought the same was erroneous, as above, or write him to convey such information?

Ans. It might have been two or three days afterwards. I think I wrote him on the second day.

Int. 13. Do you know whether or not your affidavit was subsequently made use of in this case by Mr. Howe?

(Objected to as being utterly impossible that the witness should know anything about it.)

Ans. I do not.

Cross-examination resumed:

Cross-int. 7. What was the error?

(Objected to as irrelevant.)

Ans. The error I wrote to Mr. Howe about was on time—that is, I worked there at Newton's in 1854 as well as in 1855.

Cross-int. 8. In your affidavit you deposed that the first time you worked for Newton was about March, 1855; and the error you made, if I understand, was that you previously worked there in August, 1854. Is this the error you speak of?

219 (Objected to because irrelevant; because the affidavit is not now before the court, and because this is new matter of examination on the part of the plaintiff and not rebutting.)

Ans. When I gave the affidavit I was rather forced to do it, against my conviction. But after I found the mistake I wrote to Mr. Howe about it. That is the error I wrote about. In making that error it rather disarranged the whole affidavit.

Cross-int. 9. Didn't you, at my request, examine Mr. Newton's books in order to ascertain when it was you worked for him?

(Objected to as above.)

Ans. I did not examine the books. I went there at the request of Mr. Maynadier. I did not suppose I had any right to examine the books, but I asked Mr. Newton when it was that I was there at work, supposing that was all that was wanted.

Cross-int. 10. Then Mr. Newton told you that you were there in the spring of 1855, didn't he? and examined his books himself, or had some one examined them for him?

(Objected to as above.)

Ans. He did. He examined the books himself.

Cross-int. 11. Are you an American?

Ans. I am.

Cross-int. 12. And do you mean now to swear that I or Mr. Howe forced you to give a false affidavit in this case?

Ans. I do not.

Direct examination renewed:

Int. 14. If I understand your testimony you mean to testify that you were persuaded by Mr. Howe or his counsel to believe that you first worked for Mr. Otis Newton in the spring of 1855—that it was your impression, at the time, that you first worked for him in the summer or fall of 1854, and that you have now no doubt of it, and that thereby the error as to date was committed. Whether or not am I right?

(Objected to as being a plain attempt to again force the witness to swear in a certain way, and because it already appears by his testimony, that Mr. Howe's counsel caused the witness to go to Mr. Newton, and ascertain from him and his books when the witness had worked for him; and that thereby the witness was "per-
220 suaded to believe that he first worked for Mr. Newton in the spring of 1855;" and because it is insulting, or ought to be, to charge any citizen of this Commonwealth that he was persuaded to believe, and then swear to anything he did not in fact believe.

Defendant's counsel, since the palliation attempted by the pretended objection taken to this interrogatory—desires the witness to answer whether or not he was informed by plaintiff or his counsel that the spring of 1855 was the first time of his working for Mr. Newton prior to the request that he should go to Mr. Newton for information on that subject, and whether or not before so going to Mr. Newton he informed plaintiff or his counsel that, according to his recollection, he had worked for Mr. Newton before the spring of 1855.)

Ans. I thought I had answered that question. I mean to be understood that what Mr. Howe and Mr. Maynadier said did not influence me at all; it might have had a bearing on giving the affidavit. I was confident all along it was 1854. After I found from Mr. Newton that it was in 1855, I had no other direct evidence going to show that I worked for Mr. Newton at an earlier period; therefore I went back and gave my affidavit, believing then that it was correct. I think that Mr. Maynadier thought it must be in '55, I first worked

for Mr. Newton, according to the other affidavits, and those who worked in the shop with me. I informed Mr. Maynadier and Mr. Howe that I had every reason to believe that I worked for Mr. Newton before 1855; and this information was given before I went to see Mr. Newton.

Int. 15. Since going to Mr. Newton at request of the plaintiff or his counsel as above, and getting the information on which you acted in making your affidavit, what have you done, and how have you ascertained that you worked for Mr. Newton prior to 1855, as above testified by you?

Ans. After signing the affidavit I met Mr. Newton at the depot the same morning I gave my affidavits and told Mr. Newton I must be mistaken in giving that affidavit, for I was positive I worked for him in 1854. He proposed going back to the counting-room and looking the books over again. We went over, and on examining the books again I found I was there as above stated. By circumstances and those who worked with me, I know it must have been in 1854.

MERRICK F. OTIS.

221 Deposition of Aaron Rice, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Aaron Rice; age, 50; boot-treer; reside at Ashland.

Int. 2. Please look at the boot-tree marked "youth's" here present, having shifting backs, so-called, and state where, and by whom a tree of this description was first used, and by whom the said was made, to your knowledge.

Ans. The first tree of the kind I saw was at Simpson Jones's shop at Ashland. It was made by Mr. Shumway, of Worcester.

Int. 3. When first was this shifting back tree used at Jones's shop, and by whom, and for how long time was its use continued at said shop?

Ans. It was used in the spring of 1854 by John B. Forbes. It was used from time to time for seven or ten years.

Cross-examined by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. How do you fix the date?

Ans. I fix the date by a note which Forbes gave to Jones when he left.

Cross-int. 2. What is the date of that note?

Ans. March 29th, 1855.

Cross-int. 3. How does that enable you to fix the date?

Ans. Because I was knowing to his working there nearly two years before the note was given.

Cross-int. 4. Did he work all the time on this tree?

Ans. No, sir. He worked on a small tree part of the time. The tree I speak of was a man's tree.

Cross-int. 5. How do you fix the time when he began to work on this tree?

Ans. I was at work by the side of him, in the same shop, and know when he went on to it.

222 Cross-int. 6. Are you willing to swear that this tree was received by Simpson Jones as early as May, 1854?

Ans. Yes, sir, I am.

Cross-int. 7. Did this tree have four or two inclined planes?

Ans. It had two. I never saw one with four.

Cross-int. 8. Who else worked there while you were there, and where are they now?

Ans. A man by the name of Flood; a man by the name of Jedediah Adams—he went out west. There were others whose names I don't recollect.

Cross-int. 9. Who was in company with Simpson Jones in 1854?

Ans. Lee Claflin, I believe. Jones manufactured for him. I can't say that they were partners.

Cross-int. 10. What other trees did Jones & Co. have at that time?

Ans. I think he had a brass tree for boys, which he got from Mr. Shumway, at that time. The rest of his trees, I think, were the old-fashioned slide trees.

AARON RICE.

Deposition of Aaron Rice, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. Are you the same person called as a witness in this case some days since?

Ans. I am.

Int. 2. In the evidence previously given by you, you testify respecting a boot-tree with shifting backs, constructed as is the exhibit marked "Youth's, G. D. N.," and which you first saw, as you say, at the shop of Simpson Jones, in Ashland, in 1854, and which was there used in the spring of 1854, by John B. Forbes. Do you know where that boot-tree now is? If so, state, and produce it if you can, to be annexed to the deposition.

(Objected to as not in reply to complainant's case, but only cumulative.)

•223 Ans. There is the identical tree.

(Witness produces a tree marked "Rice, G. D. N., No. 3.")

Int. 3. Where did you procure this boot-tree, and when and where did you first see the same?

(Objected to as above.)

Ans. I took it from Newhall & Claflin's shop—the shop formerly occupied by Simpson Jones. I first saw the tree in the spring of 1854, at Jones's shop; that is the time when Forbes worked on it. I think I saw it before that time; but I am sure I saw it then.

Int. 4. How much before that time do you think you first saw this boot-tree?

(Objected to as above.)

Ans. I think he purchased it the fall before, but I could not swear to it positively.

Int. 5. Why do you think that he, Simpson Jones, purchased it in the fall of 1853?

(Objected to as above.)

Ans. Forbes spoke of the date on the tree. He says, "It's 1853; the date on the tree is 1853; he must have made it this year." The date is covered by the strap—the iron strap on the top of the casting. I have not seen the date since the strap was put on. The conversation took place at the time the tree was brought into the shop.

Int. 6. How was the date marked on the tree as noticed by you and Forbes at the time?

Ans. There was a little brass piece on one side or other of the casting with the date put on. It is under the band now, unless it has been lost.

Int. 7. Do you or not mean the date which you now perceive on the top of the lapping brasses marked 1850?

Ans. There was another in addition to that.

Int. 8. Please answer the last question directly.

Ans. I do not.

Int. 9. State, if you please, what was the mark noticed by you and Forbes in 1853, as you think, on what particular part of the tree the same was located. How the mark was made, if you know, and why it is not now visible.

(Objected to as above, and as being already answered.)

Ans. A little piece of brass to the best of my opinion; brass or copper; it must have been brass, cut into like the lapping
224 brass, the mark was 1853; it was located under the band, one side or other of the tree on the top of the casting.

Int. 10. Why, if you know, is the band now upon the tree—the band which covers the mark 1853?

Ans. Because the tree had been broken.

Int. 11. How are you enabled to identify this tree as the tree you think you saw in 1853?

Ans. By various marks: the band, and the screw in the band, the iron shown between the wood front, and the side-lapping brasses.

Int. 12. For how long time were you employed in the shop where this tree was used?

Ans. Eleven years or more.

Int. 13. How often during that time have you seen this boot-tree?

Ans. Every day when it was in use.

Int. 14. When did you leave work in that shop, and how often have you seen this boot-tree since that time?

Ans. I left a year ago last April. Since then I have seen the tree a dozen times, I should think.

Cross-examination by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. Please remove the band, and state whether that piece of brass is there now or not.

(The band having been removed as requested, the witness says:)

Ans. The brass does not appear to be there now.

Cross-int. 2. How long had you worked in Simpson Jones's shop before you got this tree, as near as you recollect?

(Counsel for complainant having omitted, by mistake, to mark the first and second questions de bene, and as counsel for respondent refuses to allow him to mark said questions be bene, he notifies him that they were de bene, and that the whole cross-examination is de bene.

Counsel for defendant having asked plaintiff's counsel for what reason he wishes to cross-examine de bene, and being refused information, and not being aware of any reason for such limita-
225 tion of the cross-examination, cannot consent that interrogatories already put and answered should be so treated.

The defendant's solicitor is referred to the objection to the second interrogatory.)

Ans. I should think some three or four years. I could not say exactly; it is some time ago to remember.

Cross-int 3. When was that band put on the tree, as near as you now recollect?

Ans. It must have been seven or eight years ago; could not tell definitely; could tell by fixing the date when the man worked there who broke it.

Cross-int. 4. Who was the man who broke it; and where is he now, if you know?

Ans. His name is Hall. He is in the State of Maine; I don't know whereabouts. His name is Melville Hall.

Cross int. 5. When did Newhall & Claflin take Simpson Jones's shop?

Ans. Last spring.

Cross-int. 6. Did simpson Jones occupy it when Newhall & Claflin took it? If not, who did?

Ans. Newhall & Jones. That Jones was Simpson Jones, who is now dead.

Cross-int. 7. When did Newhall become a partner with Jones.

Ans. A year ago last spring, or about that time.

Cross-int. 8. Did Jones have a partner before Newhall? If so, who?

Ans. He did. Wilbur Claflin.

Cross-int. 9. When Jones got this tree who was in partnership with him, if any one?

Ans. He was manufacturing for Lee Claflin; whether he was partner or not, I don't know.

Cross-int. 10. You remained in the same shop where this tree was used until a year ago last April, didn't you?

Ans. No, sir, I did not.

Cross-int. 11. How long were you absent, in all, from the time that tree was first used there until a year ago last April, when you left the shop? State exactly as possible.

226 (Objected to because question assumes that the boot-tree was used continuously in the same shop where it was first used until a year ago last April, which does not yet appear, and also assumes that the witness was absent from some place not defined during that time.)

Ans. I could not say exactly. I should think somewhere in the neighborhood of four years.

Cross-int. 12. Where did you work during that time—the time you were absent?

Ans. I worked a part of the time for Luther Leland, at Ashland; I worked a spell for Houghton, of Milford; a spell for Albert Leland.

Cross-int. 13. Were you away from that shop when the tree was broke?

Ans. I was not. I worked by the side of the man when it was done.

Cross-int. 14. Now state, as near as you recollect, how long ago it was when that tree was broke.

(Objected to because already answered.)

Ans. I have answered that before. I should think some seven or eight years ago.

Cross-int. 15. Who put that band upon it, and where was it sent to be repaired?

Ans. It was sent to Worcester. I never knew who put on the band.

Cross-int. The piece of iron showing between the wood front and the brasses was put on at the same time the band was, wasn't it?

Ans. Yes, sir.

Cross-int. 17. Did you work in that shop all the time from the time the tree first came there until it was broken?

Ans. No, sir.

Cross-int. 18. How long were you away, and where did you work? that is, from the time the tree came there until it was broken?

Ans. About four years; the places I have given above.

Cross-int. 19. Are there any other marks on that tree by which you know it is the same tree, except the bands and the piece of iron between the wood front and the brasses? State any other mark you see.

227 Ans. There are marks inside. The pieces of iron stick up a good deal inside. There is nothing else besides what I have stated. I can swear that is the tree, as I can swear to my existence, that is so.

Cross-int. 20. Are you sure there are no other marks on the tree by which you identify it? Please examine it carefully, and state if there are any other marks than those you have mentioned.

Ans. I find on the heel-end of both backs a wedged-shape piece of wood put in to enlarge the size of the heel.

Cross-int. 21. When were these wedges put in, as nearly as you recollect?

Answer. I could not fix any date at all. It was done since the band was put on, I think, but I can't say when.

Cross-int 22. Has that band been taken off since it was put on, to your knowledge, before it was taken off here this morning?

Ans. No, sir.

Cross-int. 23. Are you sure there are no other marks by which you identify the tree, except these you have mentioned?

Ans. I think not.

Cross-int. 24. Are you sure?

Ans. Yes, I am sure there are no others I know of now.

Cross-int. 25. Do you see at the top of one of the backs a place where the wood and the brass has recently been cut away to fit the piece of iron put on the inside of the centre-piece casting to mend it? Do you know when that was cut away?

(Objected to because it assumes the cutting to have been recent, without evidence.)

Ans. I do see it. I don't know when it was cut away.

Cross-int. 26. Do you also see two comparatively fresh cuts in the wood of each back at the place where the lower inclines are set in? Do you know when or why these cuts were made?

Ans. I do see them; but I don't know when or why they were made.

Cross-int. 27. When you last saw this tree had the backs been cut as described in the two last questions?

Ans. Not that I know of. I did not notice.

Cross-int. 28. About how large was that piece of brass which you say was on one side of the casting?

228 (Objected to because the piece of brass supposed to be under the band was not found there, and the witness has so stated in his previous answer.)

Ans. It was quite small. It was not on the casting, but on the wood—the top part of the wood, where the iron band came over it.

Cross-int. 29. Did you ever see any other tree so marked? If so, how many, and whose make, if you know?

Ans. Eames's trees used to be marked something similar. I don't know whether they are now or not.

Cross-int. 30. Was this the only tree with shifting backs used in Ashland, that you knew of, before 1865?

Ans. I should think not.

Cross-int. 31. How many others, and by whom used up to 1855, as near as you now recollect?

Ans. I could not say. I think S. W. Wiggin had them in use before 1855, but I could not swear to it. There are no others I now think of.

Cross-int. 32. Wasn't Mr. Thayer in company with Mr. Wiggin before 1855?

Ans. I should think he was somewhere about that time.

Cross-int. 33. Have you ever seen a tree of Shumway's make of a different pattern from the one marked "Rice G. D. N.?"

Ans. I think not.

Cross-int. 34. Have you ever seen any other of Shumway's trees marked with the year on a piece of brass, as you testified that tree was?

Ans. I have not.

Cross-int. 35. Examine that tree carefully, and state whether you see any marks of where that piece of brass was put on.

Ans. I do not.

Ans. I could not say exactly. I should think somewhere in the neighborhood of four years.

Cross-int. 12. Where did you work during that time—the time you were absent?

Ans. I worked a part of the time for Luther Leland, at Ashland; I worked a spell for Houghton, of Milford; a spell for Albert Leland.

Cross-int. 13. Were you away from that shop when the tree was broke?

Ans. I was not. I worked by the side of the man when it was done.

Cross-int. 14. Now state, as near as you recollect, how long ago it was when that tree was broke.

(Objected to because already answered.)

Ans. I have answered that before. I should think some seven or eight years ago.

Cross-int. 15. Who put that band upon it, and where was it sent to be repaired?

Ans. It was sent to Worcester. I never knew who put on the band.

Cross-int. The piece of iron showing between the wood front and the brasses was put on at the same time the band was, wasn't it?

Ans. Yes, sir.

Cross-int. 17. Did you work in that shop all the time from the time the tree first came there until it was broken?

Ans. No, sir.

Cross-int. 18. How long were you away, and where did you work? that is, from the time the tree came there until it was broken?

Ans. About four years; the places I have given above.

Cross-int. 19. Are there any other marks on that tree by which you know it is the same tree, except the bands and the piece of iron between the wood front and the brasses? State any other mark you see.

227 Ans. There are marks inside. The pieces of iron stick up a good deal inside. There is nothing else besides what I have stated. I can swear that is the tree, as I can swear to my existence, that is so.

Cross-int. 20. Are you sure there are no other marks on the tree by which you identify it? Please examine it carefully, and state if there are any other marks than those you have mentioned.

Ans. I find on the heel-end of both backs a wedged-shape piece of wood put in to enlarge the size of the heel.

Cross-int. 21. When were these wedges put in, as nearly as you recollect?

Answer. I could not fix any date at all. It was done since the band was put on, I think, but I can't say when.

Cross-int 22. Has that band been taken off since it was put on, to your knowledge, before it was taken off here this morning?

Ans. No, sir.

Cross-int. 23. Are you sure there are no other marks by which you identify the tree, except these you have mentioned?

Ans. I think not.

Cross-int. 24. Are you sure?

Ans. Yes, I am sure there are no others I know of now.

Cross-int. 25. Do you see at the top of one of the backs a place where the wood and the brass has recently been cut away to fit the piece of iron put on the inside of the centre-piece casting to mend it? Do you know when that was cut away?

(Objected to because it assumes the cutting to have been recent, without evidence.)

Ans. I do see it. I don't know when it was cut away.

Cross-int. 26. Do you also see two comparatively fresh cuts in the wood of each back at the place where the lower inclines are set in? Do you know when or why these cuts were made?

Ans. I do see them; but I don't know when or why they were made.

Cross-int. 27. When you last saw this tree had the backs been cut as described in the two last questions?

Ans. Not that I know of. I did not notice.

Cross-int. 28. About how large was that piece of brass which you say was on one side of the casting?

228 (Objected to because the piece of brass supposed to be under the band was not found there, and the witness has so stated in his previous answer.)

Ans. It was quite small. It was not on the casting, but on the wood—the top part of the wood, where the iron band came over it.

Cross-int. 29. Did you ever see any other tree so marked? If so, how many, and whose make, if you know?

Ans. Eames's trees used to be marked something similar. I don't know whether they are now or not.

Cross-int. 30. Was this the only tree with shifting backs used in Ashland, that you knew of, before 1865?

Ans. I should think not.

Cross-int. 31. How many others, and by whom used up to 1855, as near as you now recollect?

Ans. I could not say. I think S. W. Wiggin had them in use before 1855, but I could not swear to it. There are no others I now think of.

Cross-int. 32. Wasn't Mr. Thayer in company with Mr. Wiggin before 1855?

Ans. I should think he was somewhere about that time.

Cross-int. 33. Have you ever seen a tree of Shumway's make of a different pattern from the one marked "Rice G. D. N.?"

Ans. I think not.

Cross-int. 34. Have you ever seen any other of Shumway's trees marked with the year on a piece of brass, as you testified that tree was?

Ans. I have not.

Cross-int. 35. Examine that tree carefully, and state whether you see any marks of where that piece of brass was put on.

Ans. I do not.

Cross-int. 36. How long after Jones got this tree before he got another like it?

Ans. I could not tell.

Cross-int. 37. How many other trees did Mr. Jones have when he got this tree?

Ans. Three or four, or four or five—I don't recollect, it is
229 so long ago—they were slide trees, except a second-hand brass tree, boy's—we did not use it much.

Cross-int. 38. He got that boy's tree of Shumway, did he?

Ans. I think he did; but I could not swear who he had it of.

Cross-int. 39. Did Wiggin get his tree before or after Jones got his?

Ans. I should think it was after, but I can't say positive.

Cross-int. 40. How many trees did Jones have when this one was broke?

Ans. He might have had five or six—I could not say how many.

Cross-int. 41. What kind of trees were they?

Ans. Slide trees, most of them.

Cross-int. 42. What other kinds?

Ans. I could not say positively; but I think he had another shifting back trees (boy's) like "Rice No. 3."

Cross-int. 43. Do you know what became of the boy's brass tree? (Objected to, first as irrelevant; second, as indefinite.)

Ans. I think Mr. Shumway took it, in exchange I think; but as this I don't know.

Direct examination resumed:

Int. 15. On removing the wrought-iron band around the top of the leg of boot-tree No. 3, since your cross-examination began to-day, you don't find any brass plate under it. What mark or stamp do you find under this band after its removal?

Ans. I find 1853 stamped on the iron.

Int. 16. Since you find the stamp which you recollected, but not the brass as the material upon which the stamp was made, may you not have been mistaken in the idea that this stamp was upon brass when you first saw it? Were the figures 1853 stamped more than once upon such boot-tree when you first saw it?

Ans. My impression is strong that there was a piece of brass; it may have been taken from some other tree; I might have been mistaken.

Int. 17. May you not have confounded the two figures, and
230 got the idea that 1853 was stamped on the brass plate, because the figures 1850 are so stamped in said boot-tree?

Ans. No; I think not. I never noticed the figures on the side brasses until to-day. I mean that I had forgotten the figures on the side brasses until I saw them to-day.

Cross-examination resumed:

Cross-int. 44. Do you mean to be understood to testify that you did notice, when you first saw the tree, that the figures 1853 were stamped on the iron of the centre-piece casting?

Ans. I don't recollect about that. Since the band was removed I have seen it.

Cross-int. 45. Have you any recollection of having seen those figures before to-day? If so, state when?

Ans. I have not.

Direct resumed:

Int. 18. Do you or not believe the figures 1853 stamped in iron were the same you saw in 1853, or that they have been put there since that time?

(Objected to because the first clause has been distinctly answered in 16th direct resumed; and because the second clause inquires merely for matter of opinion.)

Ans. I don't know anything about the figures on the iron; I think the figures I saw were on the brass; I don't think the figures stamped in the iron were stamped there since 1853.

AARON RICE.

Deposition of A. B. Chaffee, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is A. B. Chaffee; age, 43; reside at Worcester; occupation, armorer or gunsmith.

231 Int. 2. What was your business prior to June, 1852; and where did you carry on such business, and with whom?

Ans. My business was that of brass founder at Worcester. I was in partnership with Jason Chapin from May 22d, 1849, to May 22d, 1852; I have not been in that business since '52.

Int. 3. Whether or not you made any castings for E. L. Shumway, to be used in making boot-trees by him, before quitting said business?

Ans. I did.

Int. 4. Please look at exhibit marked "Patterns, G. D. N.," and state whether or not you ever made castings for Mr. Shumway from patterns like these, or either of them, while in that business as above stated.

Ans. I think I have, from all of them.

Int. 5. For what were these patterns intended by Mr. Shumway, if you know?

Ans. I suppose they were for boot-trees.

Int. 6. Please look at tree marked "No. 1, C. H. T.," as to the mode of connecting the front and back together, and state whether these patterns are patterns of the two cross-heads and inclines therein found.

Ans. The parts in the exhibit are moulded from patterns like these; whether from the same or not, I don't know.

Cross-examination by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. Did you make any other castings for Mr. Shumway, or any other person with whom he was a partner, or in whose employ he was?

Ans. I did.

Cross-int. 2. What castings were these? State as fully as possible.

Ans. Heel slides, backs of brass, and other pieces of boot-trees made of brass, the names of which I don't know.

Cross-int. 3. Where was Mr. Shumway's place of business then?

Ans. In Worcester; part of the time, my impression is, he was in the Washington street machine shop. He was *was* in Merri-
232 field's buildings some time; I don't recollect where he was when these castings were made.

Cross-int. 4. Who were Mr. Shumway's partners, or for whom did he work in '49, '52?

Ans. I don't know that he had any partners. I supposed he was working for himself.

Cross-int. 5. Did you ever make any castings for him while he was in Court Mills, in Worcester?

Ans. I don't know that I did; I don't know that Mr. Shumway was there.

Cross-int. 6. Did you have any account for these castings with any person? If so, with whom?

Ans. I did not. They were always paid for when taken away.

Cross-int. 7. What amount of work did you do in casting from the patterns produced, and the backs, and other parts of boot-trees? State generally.

Ans. I could not tell. On some of the parts we did considerable; there were quite a number of backs, and quite a number of the patterns—how many I can't say, as I kept no account of these articles, or with Mr. Shumway.

Cross-int. 8. What men were employed by you from '49 to '52?

Ans. I don't know that I could tell. There were Smith, Chapin, myself, partner, Milton Chapin, a part of the time, a man named Timothy Leyden, who was not a moulder. There were no other employed.

Cross-int. 9. Do you know whether the pieces cast from the patterns produced can be used in any other machine than a boot-tree?

Ans. I do not.

Cross int. 10. Do you know how the pieces cast by you from the patterns produced were, in fact, produced?

Ans. I do not.

A. B. CHAFFEE.

233 Deposition of Otis Newton, taken, subscribed and sworn to before George D. Noyes, examiner.

Int. 1. Are you defendant in this case?

Ans. I am.

Int. 2. Please look at the tree marked "Youth's" here shown you, and state whether it is the same boot-tree purchased by you of E. L. Shumway, in June, 1865, for the use of which, by you, this bill in equity has been brought, or is prosecuted as understood against you.

Ans. I think it is the same.

Int. 3. Whether or not when purchased by you in June, 1865, this was a new tree, or second hand?

Ans. I purchased it as a second hand tree—this tree and a boy's tree. I think it is a second hand tree; I received it as such.

Int. 4. Whether or not you were informed at the time of purchasing by whom this tree had before been used or owned.

(Objected to.)

Ans. I was informed when I made the purchase, that the youth's tree was had of Mr. Forbush, of Grafton. As to the other tree, I think I was informed at the time, but I don't now recollect the name.

Int. 5. If you saw these trees in Mr. Shumway's shop before they were brought to your shop, state how they then appeared, before being brought to your shop.

Ans. I saw them at Mr. Shumway's shop. I was in a hurry for trees at that time, and called on Mr. Shumway to get them. He took me out into his back shop, and showed me those two trees. I examined them, and thought they were in very good condition; they had been used well. I was not at home when they were brought to my shop; but as soon as I learned they had been brought, I examined them. They had been newly dressed over, and the feet fitted to the boots which I sent up.

Int. 6: If before this time you had ever purchased or procured of Mr: Shumway boot-trees of this description, with shifting
234 backs, (without regard to size I mean,) state when first you had any such trees of him:

Ans. I had some in 1854. I had five sets at one time. They were all ordered, but not all received at the same time. I think I received one or two sets the last of February, 1854. The rest of the order came in March following.

Int. 7. Where was Mr. Shumway doing business when you gave the order for these trees, and how long was the order given before the same was filled in whole or in part, and whether or not at the time of giving the order, you saw any such trees in Mr. Shumway's shop?

Ans. In Merrifield's building, Worcester. I should think it was two or three weeks before I received any part of the order. I don't recollect whether I saw any in Mr. Shumway's shop or not. I had heard of that kind of tree, and been recommended to get it; and therefore ordered it.

Int. 8. Was this before or after the fire which destroyed Merrifield's building?

Ans. It was before. My impression is the fire took place the following June—I am not certain.

Int. 9. Did you put these trees, so purchased early in 1854, into use, and continue them; or what became of them?

Ans. I put them into use immediately, and kept them, used them as I had occasion. In 1855 or 1856, I sold out my business, and those trees went into the hands of the purchaser.

Cross-examined by J. E. Maynadier, esq., solicitor for plaintiff.

Cross-int. 1. You say you were recommended to get these trees. Who was it that recommended you?

Ans. I don't know that I can give any names. They were some of my treers. They had seen them and told me of them.

Cross-int. 2. You are acquainted, I believe, with machine trees, known as brass or Bliss trees, or Howe trees.

Ans. I think I had one in my shop once. One of my workmen got it on his own account, and worked on it himself for me.

Cross-int. 3. And you wish to be distinctly understood to
235 testify that that tree was the only one of the kind ever used in your shop; do you?

(Objected to as irrelevant.)

Ans. That is the only one I recollect now of that kind.

Cross-int. 4. Were there several kinds of brass or Bliss trees?

(Objected to as irrelevant.)

Ans. I don't recollect of owning any of that kind.

Cross-int. 5. Did not Mr. Shumway manufacture the brass or Bliss trees for some years?

(Objected to as irrelevant.)

Ans. I don't recollect of it.

Cross-int. 6. Now, are you willing to swear that the five trees you ordered in the early part of 1854 from Mr. Shumway were not brass or Bliss trees?

Ans. I don't know that I can answer that in that form. I am confident that the five trees which I ordered and received were like the tree here marked "Youth's."

Cross-int. 7. Were those five trees brass or Bliss trees or not, as you understood the term brass or Bliss trees?

Ans. They were not. They were like the tree marked "Youth's."

Cross-int. 8. You say one of your treers owned a brass tree, and worked on it for you. Was this treer Chauncey Nelson?

Ans. Chauncey B. Nelson.

Cross-int. 9. Now, will you swear that the five trees you got from Shumway in 1854, were not the same kind of trees that Chauncey B. Nelson owned?

Ans. They were not the same.

Cross-int. 10. Will you swear that they were not more like Nelson's tree than like exhibit marked "Youth's?"

(Objected to for cause.)

Ans. They were more like the exhibit than like Nelson's tree.

Cross-int. 11. Can you swear positively that those five trees had mechanism for distending or separating the parts like the mechanism in the tree marked "Youth's?"

Ans. Yes; they had the same mechanism. I am confident they had.

Cross-int. 12. Did you ever own any machine-tree of any kind before you owned the first of these five trees?

Ans. My impression is that I did not.

236 Cross-int. 13. Can you not swear more positively?
(Objected to.)
Ans. I cannot.
Cross-int. 14. What kind of trees did you use before you went into your new building in 1854?
(Objected to.)
Ans. Mr. Nelson used his tree in the old building. All the rest were common slide trees. That is my impression.
Cross-int. 15. What month was it when you went into your building?
Ans. It took some time to move. We got in in March.
Cross-int. 16. How many machine trees were used in that new building up to July, 1854?
(Objected to.)
Ans. The five trees that belonged to me, and Nelson's tree.
Cross-int. 17. When did you get your next tree from Shumway?
Ans. I have no dates. I have had quite a number since, but have no means of fixing the dates.
Cross-int. 18. You say you ordered five trees from Shumway in the early part of 1854. How long was it before you ordered any more from him.
Objected to because irrelevant, and because already answered in the last answer.)
Ans. I can't fix the date.
Cross-int. 19. The same question is repeated.
Ans. I think I had a boy's tree in 1855 or '56. That is my impression, but I am not positive.
Cross-int. 20. When did you get the four-incline plane tree from Mr. Shumway?
(Objected to because witness has not so testified.)
Ans. I have no particular knowledge of any such tree. I never owned one, and have no knowledge of any such tree.
Cross-int. 21. Are you as sure that you never owned a four-incline plane tree as you are that the five trees you got from Shumway had two inclines and cross-heads.
(Objected to.)
Ans. I am sure I never owned any kind, except like the youth's tree. I don't pretend to know anything about any other kind.
Cross-int. 22. Who were the treers who worked for you in the early part of 1854 in your new building?
237 (Objected to as immaterial.)
Ans. Mr. James M. Gibson treed part of the time, and packed part of the time. A man named Wallace, Merrick F. Otis, Chauncey B. Nelson, Merrill Nelson, now dead, Robert Woodman. I recollect no more now.
Cross-int. 23. You have books, I believe, which will show the names of all the men employed by you in 1854. Will you draw off from them a list of all the men employed in the new building during that year, and hand it to the magistrate as soon as possible?

Ans. I have a book containing all the names during that time. I suppose I will bring in a list if I am obliged to.

Cross-int. 24. Will you allow Mr. Howe, or some person employed by him, to examine the book or books which contains these names, and make the list asked for in the last question?

(Objected to because involving no fact in controversy.)

Ans. I will not.

Cross-int. 25. Have you purchased from Mr. Shumway any other trees than the two trees testified to by you since December 31st, 1864? If so, how many, and what sizes?

Ans. I have not.

Cross-int. 26. Do you conduct this defence, or does Mr. Shumway?

Ans. Mr. Shumway has the principal charge of it.

Cross-int. 27. Who meets the expense of it? You or Mr. Shumway?

Ans. Mr. Shumway, I believe, has paid all the bills so far.

Cross-int. 28. Who will pay the costs, and any amount which may be recovered, if the plaintiff prevails? You or Mr. Shumway?

(Objected to as involving an impossible hypothesis.)

Ans. I expect Mr. Shumway will.

Cross-int. 29. Are you secured in any way by Mr. Shumway?

Ans. I am not.

Cross-int. 30. Hasn't he promised to save you harmless in case the plaintiff prevails?

(Objected to as implying that either Mr. Shumway or the witness has doubts as to the results of this case.)

Ans. He said he would pay all bills.

238 Cross-int. 31. Are you willing to swear that the tree produced, marked "Youth's," is the identical tree examined by Mr. Howe and Mr. Bradish in your shop at Westborough last fall?

Ans. I have no doubts of it.

Cross-int. 32. Have any of the parts been replaced by other like parts since that time?

Ans. Not to my knowledge.

Cross-int. 33. Do you know of any other manufacturer in Westborough who had trees like the five you got from Shumway in that year?

Ans. That I don't know anything about.

Cross-int. 34. Do you know what trees were used in Westborough and the neighborhood in the year 1854.

(Objected to.)

Ans. I do not.

OTIS NEWTON.

Deposition of James M. Gibson, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is James M. Gibson; age, 48; reside at Brookfield; boot-treer.

Int. 2. Did you at the request of Mr. Howe, complainant in this case, give an affidavit therein at an earlier stage of the case?

Ans. I did.

Int. 3. What reason did he assign for taking your affidavit?

Ans. He wanted to use it in regard to boot-trees.

(The solicitor for defendant here notifies the complainant to produce the affidavit of Mr. Gibson taken, as is supposed, to be used in this case.

The solicitor for complainant declines to produce the affidavit and informs the defendant that it was taken for use only on motion for an interlocutory injunction.

Defendant's solicitor desires to know why it was not then used, or filed on the hearing of said motion.

239 Solicitor for complainant informs the defendant that it was not used because the complainant did not see proper to use it, conceiving that he had proof enough to secure the granting of the injunction.)

Int. 4. Where and by whom were you employed in the spring and summer of 1854?

Ans. At Westborough, by Otis Newton, the defendant in this case.

Int. 5. Please look at the boot-tree marked "No. 1, C. H. T.," with shifting backs, and state whether or not Mr. Newton had in use any such boot-tree in his shop while you were there in 1854?

Ans. He had, two of them I think, men's trees. He got them new that spring of E. L. Shumway.

Int. 6. When did you leave Mr. Newton's employ, and where next go to work, and when?

Ans. I left about the first of October, 1854. I next went to work for Charles Fales, in Brookfield, Jan. 1st, 1855.

Int. 7. When and where, after leaving Mr. Newton's employ, as above, did you next see a boot-tree with shifting backs, constructed like Exhibit "No. 1, C. H. T.," now before you?

Ans. At Charles Fales's shop, in Brookfield; I had seen the tree in his shop before going to work there, in the fall of 1854.

Int. 8. After going to work at Mr. Fales's, did you see the tree in use, or was it in use at his shop?

Ans. It was in use there, it was a man's tree.

Int. 9. Whether or not, after giving the affidavit at request of complainant in this case, was any effort made to change the same so that it would operate more favorably to the complainant in this case, not intending hereby any improper change therein?

Ans. I went to the office of Esquire Johnson, and gave two affidavits. The reason, I suppose, was, the first did not suit.

Cross-examination by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. How do you fix the date when you first went to Newton's shop?

240 Ans. It was the same spring I left off work for Kimball & Robinson, of Brookfield.

Cross-int. 2. Mr. Newton had just got into his new building, hadn't he? I mean building called Union Block.

Ans. Yes, he had just got in.

Cross-int. 3. How many machine trees did Mr. Newton have when you first went there?

Ans. I think he had six.

Cross-int. 4. Did he get any more before you left?

Ans. No, sir.

Cross-int. 5. Did not Rixford Nelson, I mean Chauncy B. Nelson, own one of these six trees?

(Objected to.)

Ans. I don't know.

Cross-int. 6. What kind of trees were these six?

Ans. Two men's trees, like "Exhibit C. H. T.," two boy's, and two youth's, not like "C. H. T.," with brass backs; they were what are called brass trees; these last had not shifting backs.

Cross-int. 7. What tree did Merrick F. Otis use while you were there?

(Objected to as new matter, and irrelevant.)

Ans. I think he used the youth's tree.

Cross-int. 8. Are you sure Otis worked there at all while you were there?

(Objected to as above.)

Ans. I am.

Cross-int. 9. Did you not say in the affidavit referred to, "I do not remember that such a person as Merrick F. Otis worked for Mr. Newton while I was with him?"

(Objected to because new matter and irrelevant, and because complainant having been requested to produce said affidavit and having declined to do so, and stated that it was not to be used, cannot now refer to it or base an examination upon it, and has declined to allow the defendant's counsel to inspect the same.

Complainant's counsel desires the witness before answering, to look at the affidavit; and of course does not object to the counsel for defendant examining it if he pleases.)

Ans. I don't know whether I did or not.

Cross-int. 10. If you did, you were mistaken, were you not?

(Objected to as before, and as hypothetical.)

241 Ans. I rather think there was such a man there. It was so long ago, I can hardly call him to mind.

Cross-int. 11. You were boss-treer?

Ans. Yes, sir; I had charge of trees.

Cross-int. 12. Merrill Nelson, Austin Wallace, Robert Woodman, Chauncey Nelson, Charles F. Hobbs, and Warren Nelson all worked for Newton up to the summer of 1854, didn't they?

(Objected to as not rebutting, and immaterial.)

Ans. Yes, sir.

Cross-int. 13. How many machine trees did Mr. Fales have when you went there?

Ans. Three; one man's, one boys, and one youth's. The boy's

and youth's were brass trees. The man's tree was like "Exhibit C. H. T."

Cross-int. 14. Do you know who owned these two brass trees?
(Objected to as before.)
Ans. Lucius Hobbs; I think his middle name is F.
Cross-int. 15. Didn't Fales afterwards buy these trees from Hobbs?
(Objected to as before.)
Ans. Yes, he did.
Cross-int. 16. When was Fales's shop burned?
(Objected to as before.)
Ans. I think it was in February, 1855.
Cross-int. 17. When did he get into his new shop?
Ans. In June, 1855.
Cross-int. 18. Did he get new trees, or a new tree at that time?
(Objected to as before.)
Ans. I don't recollect.
Cross-int. 19. How long did you work for Fales?
(Objected to as before.)
Ans. I have worked for him ever since Jan. 1st, 1855.

J. M. GIBSON.

242 Deposition of Emory L. Shumway, taken, subscribed, and and sworn to before George D. Noyes, examiner.

SEPT. 25TH, 1866.

Int. 1. What is your name, age, residence, and occupation?
Ans. My name is Emory L. Shumway; I reside at Worcester; age, about 44; manufacturer of boot and shoe machinery.
Int. 2. How long have you been engaged in the manufacture of boot and shoe machinery, in any way?
Ans. Ever since 1847.
Int. 3. Do you know Otis Newton, the defendant, and if you sold him the boot-tree marked "Youth's, G. D. N.," when was such sale made?
Ans. I do know him; I sold him that youth's boot-tree the last of June, 1865.
Int. 4. What other boot-tree, if any, was sold to him at the same time?
Ans. A boy's boot-tree; a larger size than this, of the same kind.
Int. 5. Whether or not these two boot-trees sold to Newton in June, 1865, were newly made or second-hand—that is, made and sold by you to others previous to the sale thereof to Newton?
Ans. They were second-hand; they had been sold to other parties, and I bought them back.
Int. 6. Were they in your possession at the time Newton applied to you for boot-trees? If yea, how long previously in your possession?
Aans. They were. One of them I had had five or six months, the other one I should think about two months.
Int. 7. Whether or not these two boot-trees were originally made and sold by you before or since 1862?

Ans. They were so made and sold before 1862.

Int. 8. Of whom were they repurchased by you before the sale to Newton?

Ans. The boy's tree I had of Mr. Johnson, of Hubbardston; the youth's tree I bought of Furbush & Wheeler.

Int. 9. Whether or not you sold Mr. Newton any other boot-trees than these two in 1865, prior to July of that year?

243 Ans. I did not.

Int. 10. What means have you now of ascertaining from whom you purchased the boot-tree marked youth's, and sold, as you say, to Newton in June, 1865? Anything more than memory, I mean.

Ans. I have a memorandum book that has an entry of it.

Int. 11. What repairs, if any, were made upon these two trees or either of them at the time Newton purchased of you?

(Counsel for complainant objects to so much of inquiry as relates to boy's tree as immaterial in this suit; solicitor for defendant thereupon withdraws so much of the inquiry as relates to the boy's tree, on the understanding that the same is not in controversy in this case.)

Ans. The feet were changed over so as to fit the boots Mr. Newton sent to have the tree fitted to. The leg part of the tree was only rubbed over and varnished.

Int. 12. Whether or not Mr. Newton, at the time of buying these trees, saw them, and knew, or was informed of the price before the purchase, and what such price was, and whether of new or second-hand boot-trees?

Ans. He did see them, and the price was agreed upon. The price was to be fifty dollars for the two. There was no division as to the price of each between Mr. Newton and myself. It was the price of second-hand articles.

Int. 13. Did you at any time prior to 1865, and when, cease the manufacture of new boot-trees, and confine yourself to the purchase, sale, and repair of second-hand boot-trees? If so, how long did this continue to be your business arrangement?

Ans. I did, in the fall of 1862. I continued until April, 1863. Then I made arrangements with Mr. Howe the complainant, to make trees for him. I worked for Mr. Howe until February, 1864. After that I repaired, and bought, and sold trees, not making any new ones till about the first of 1865.

Int. 14. What, if anything, occurred about the first of 1865 which led you to make new boot-trees, and not limit yourself to dealing in second-hand boot-trees, such as had been made and sold by you with lawful authority prior to the discontinuance of the manufacture by you in 1862?

(Objected to because it assumes that the witness had any
244 authority to manufacture and sell boot-trees, which the complainant denies, and of which no proof has been offered in behalf of the respondent. And the complainant here notifies the respondent that inasmuch as no license is pleaded by his answer, and no proof has been offered, or is competent in his behalf to show li-

cense, he claims now to recover in this suit for any and all trees used by Mr. Newton during the time covered by the bill, unless he be estopped by admissions made in the early part of this controversy, under a mistake of fact of complainant and his counsel.

Solicitor for defendant, in reply to the foregoing notification, informs the complainant that defendant does not rely upon any license from complainant, or from any prior owner of the Lewis patent, set in this suit, but expects to show that his vendor, to wit, E. L. Shumway, of the boot-tree marked "Youth's," claimed to be an infringement by complainant at the time of the original manufacture of the same prior to 1862, had authority from Benjamin D. Godfrey, the complainant's assignor, to make and sell any and all kinds of boot-trees, given by said Godfrey to Shumway before the grant or existence of the Lewis patent, that said authority had especial reference to patent titles held by said Godfrey other than any granted to Lewis, but that such authority would, and did necessarily operate as against any patent titles belonging to said Godfrey, so long as said arrangement between Godfrey and Shumway continued, even though Mr. Shumway himself does not now, and never did, admit the validity of the Lewis patent, or that he ever took any license under the same as a valid patent title. But inasmuch as this defendant is informed that said Shumway was treated by said Godfrey as lawfully authorized by him to make any boot-trees until 1862, or afterward; and inasmuch as said Godfrey, from 1859 to 1865, was the owner of the Lewis patent, now in suit, this defendant will contend that if the youth's boot-tree was originally made and sold by said Shumway, by said Godfrey's authority, that no assignee of the title of said Godfrey can interfere or deprive a purchaser of such boot-tree of the right originally given for the use and sale thereof. And this defendant does not understand that said Shumway denies the existence of authority from said Godfrey as the owner of sundry boot-tree patents to him,
Shumway, to make, and sell, but simply that he, said Shum-
245 way, does not claim any license referring to the Lewis patent, so-called. Nor does this defendant allege any such license, or admit the validity of the Lewis patent in any way.

To prevent misconception, the solicitor for complainant here informs defendant that he is in error, in supposing that complainant now claims that the tree, marked "Youths', G. D. N.," is the only infringement. He does claim that every tree now used by Mr. Newton, or which he has used during the time covered by the bill, is embraced in the prayer of the bill; and further claims that the youth's tree, tree marked "Youth's, G. D. N.," is an infringement, whether the others are or not.

Solicitor for defendant receives the above information with some surprise, inasmuch as the motion for preliminary injunction in this suit was argued and decided solely with reference to the boot-tree marked "Youth's," and its use by defendant as the cause of complaint, and other boot-trees in defendant's possession were distinguished from this on the ground that the only new tree in defendant's possession was that so marked "Youth's;" and that this youth's tree

was liable to injunction, because of its supposed newness or manufacture since Godfrey's title had passed to complainant, or since the expiration of Godfrey's authority to Shumway to make and sell boot-trees. He is also surprised because the complainant in this case, Mr. Howe, in a deposition given by him in this suit, has, as we understand, sworn that this suit is prosecuted by him, wholly and entirely with reference to the use by the defendant of the boot-tree marked "Youth's;" and that no other boot-tree in defendant's possession is regarded by him, complainant, as an infringement of his rights, his reason being that such other boot-trees, if any, were made and sold by Shumway originally, by lawful authority, and before he, complainant, acquired any rights under the Lewis patent, and so cannot be interfered with by him.

Solicitor for complainant denies that there is any such evidence properly in this case; and, again, states that any admissions by him or by complainant, which have been made as to this point, were made in ignorance of facts, and therefore ought not to be binding; which facts were known to him only about the middle of last week, and by him communicated to his client.

246 Solicitor for defendant respectfully requests solicitor of complainant to state the error of facts under which he labored when he gave his deposition on the subject-matter above referred to.

Solicitor for complainant again denies that complainant has given any such deposition in this case, and informs solicitor for defendant that the facts referred to by him will be proved by him to rebut any proof which may be offered of license or authority in Shumway, although such proof will be given de bene, as the solicitor for the complainant does not regard any question of Shumway's license or authority as being properly in issue in this suit, for the want of proper pleading, as he has before stated.

Solicitor for defendant now modifies the question, by striking out the words "with lawful authority," and the question is put without such words.)

Ans. There was a suit decided between the Howe patent and the incline plane trees the last of 1864; I understood by that decision that the incline plane trees, such as I had made formerly, did not infringe the Howe patent.

Int. 15. By the Howe patent do you mean letters patent granted to Jarvis Howe in 1848, and extended for seven years in 1862?

Ans. I do.

Int. 16. By whom was the Howe patent owned at and before the time of its extension in 1862, and into whose hands did it then pass?

(Objected to.)

Ans. Benjamin D. Godfrey; it then passed into the hands of Jarvis Howe; so Mr. Howe told me.

Int. 17. Whether or not until the extension of the Howe patent in 1862, and for many years prior thereto, you had any understanding with Mr. Godfrey, whereby he consented to the manufacture and sale by you of boot-trees? If so, what was such understanding, and why did you enter into it, and when did it cease to exist?

(Objected to.)

Ans. I did have such understanding; the understanding was that I should make boot-trees; Mr. Godfrey was to keep all infringers off, with the exception of one shop-right, and I was to pay him five dollars per tree on the number that I made; Mr. Godfrey bought
247 the Howe patent; this was the reason why I made the agreement with him; this understanding ceased to exist in 1862.

Int. 18. What importance did you attach to the Howe patent of 1848, until the decision of the case above referred to in the latter part of 1864?

(Objected to.)

Ans. I suppose that all machine-trees infringed that patent; that that patent covered all machine-trees; I thought so until the suit above mentioned was decided.

Int. 19. When was the foregoing arrangement between Godfrey and you entered into?

Ans. It was the last of July or August, 1855.

Int. 20. When first was any claim set up against you, and by whom under the Lewis patent, so called? State what took place.

(Objected to.)

Ans. In the fall of 1864 there was a suit brought against me in the name of B. D. Godfrey, on the Lewis patent, Jarvis Howe, agent; the suit was withdrawn, if I understand, by the plaintiff's paying the costs.

Int. 21. Did you, before that, ever know of any attempt to enforce the Lewis patent?

(Objected to.)

Ans. I did not.

Int. 22. Please look at the boot-trees used as exhibits in this case, re-marked respectively "No. 1, C. H. T.," and "No. 3 Rice," and state by whom they were originally made.

Ans. They were made by me.

Int. 23. When did you first become acquainted with Reuben L. Lewis, or hear of any boot-tree got up by him?

Ans. I first saw him in the fall of 1854; I first heard of his tree some time in the summer or fall of that year.

Int. 24. Whether these boot-trees, to wit, "Exhibit C. H. T." and "No. 3 Rice," were made before or after your acquaintance with Mr. Lewis?

Ans. They were made before.

Int. 25. Whether or not these boot-trees now bear any mark showing the time they were made? If so, what mark, and when was the same put upon them, and by whom?

248 Ans. They do; the mark is the date of the year on the casting; in "C. H. T.," "1852" is stamped on the side of the centre-piece, near the top; in "Rice No. 3," "1853" is stamped on the corresponding place; this mark was put on in 1852 and 1853 by me, when I let the trees go; I did not sell them at first, but then let them go on trial.

Int. 25. Who had these trees of you at such times?

Ans. The boy's tree, "C. H. T.," I put into A. Tilton & Co.'s

shop, Ashland; "Rice No. 3," I put into Simpson Jones's shop, Ashland.

Int. 27. Whether or not any boot-trees, constructed like these exhibits, were made by you and Lewis while together in business?

Ans. There was not.

Int. 28. What kind of boot-trees were made by you and Lewis while so together?

Ans. The back and front both spread out from the centre; they were what were called the four-incline trees; the leg consisted always of three pieces, sometimes four, including one changeable back.

Int. 29. Whether or not you ever paid Godfrey any tariff on account of Lewis's invention, or alleged invention, or was ever called upon by him to do so?

Ans. I did not; I never was called upon to pay anything until a suit was brought against me in 1864.

Int. 30. Please look at exhibit "patterns G. D. N.," now shown you, and state whether they are patterns for castings of parts of boot-trees like exhibits "C. H. T.," and "Rice No. 3," and "Youth's," or not.

Ans. They are.

Int. 31. Whether or not castings made from these patterns could be used in boot-trees, having four inclines in each, such as were made by you and Lewis in 1855?

Ans. The cross-head patterns could not be so used; the inclines might be so used.

Int. 32. By whom were these patterns originally got up?

Ans. They were made by me.

Int. 33. Please look at "Exhibit Lewis No. 2," being a
249 pattern for centre-casting of boot-tree, and state whether or not you identify it as once in your possession, and when and how you parted with it, if you know.

Ans. That is a pattern I used to own, and I sold it to Mr. Howe, the plaintiff.

Int. 34. Please look at the centre piece of "No. 1, C. H. T.," and, if you have compared such centre piece with said "pattern Lewis No. 2," state the results of such comparison, so far as such results show whether the casting was made from this identical pattern.

Ans. I have compared them, and find great differences between the two. A casting taken from this pattern would not be like the casting in "C. H. T."

Int. 35. In what way are you able to swear that said casting or one precisely like it, could not be made from "Lewis No. 2," as a pattern? Do you rely upon your eye alone, or upon measurements made, and how many such are different in the two?

Ans. I rely upon measurements. I find a number of differences. I find that where the foot goes on the casting is larger than the pattern, in one place. I mean that at or near the bottom part of the casting, across the socket which holds the foot, the casting is wider than the pattern. On the opposite side it is smaller considerably than the pattern. The socket at its top is narrower than the pattern.

Then I find that at the bottom of the socket the casting is considerably thicker than the pattern. I find that the pattern is longer than the casting. I find that the flange projecting in front near the journal is larger in the casting than in the pattern. Also I find the ears that hold the lock smaller in the casting than in the pattern. Also I find the slot where the lock goes a good deal lower in the pattern than it is in the casting, and wider than it is in the casting. Also the standard projecting on the back near the journal is smaller in the casting than in the pattern. Also the shape of the casting around the bottom of the standard very different in the casting from what it is in the pattern. Also the flange for the side brasses on each side of the tree are longer in the casting than in the pattern. I find the journal bigger in the pattern than in the casting. These are the main differences; there are some others inside less noticeable.

Int. 36. Do these differences between the patterns "Lewis No. 2," and casting in boot-tree "C. H. T.," noticed by you, exist in parts where no corresponding variations appear to have been made at some time in the pattern, or where the casting may not have been equally varied by wear?

Ans. Some of them do; it is not so with all. Two or three of these differences might be accounted for by the alteration of the casting or the pattern.

Int. 37. Whether or not the "pattern Lewis No. 2," or the other patterns marked respectively "Lewis Nos. 1, 3, and 4," were made by you and Lewis while together in business?

Ans. They were not.

Cross-examination by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. Please state generally your religious belief.

(Objected as immaterial, theology being unimportant in this case.)

Ans. I don't belong to any religious society. I believe we should all do as near right as we can, and that if we do not do right we shall be punished either here or hereafter.

Cross-int. 2. Are you not what is called a Friend or Quaker?

(Objected to as before.)

Ans. I never was, and am not.

Cross-int. 3. You say you supposed all machine trees infringed the Howe patent. Do you mean that, so far as you know, Mr. Howe was the original inventor of the tree described in his patent?

(Objected to because no such meaning can be inferred, and because immaterial.)

Ans. I mean that he was the one who got it patented.

Cross-int. 4. So far as you know, was he the original and first inventor of that tree?

(Objected to as immaterial.)

Ans. I think he was not.

Cross-int. 5. Who was, in your opinion?

(Objected to.)

Ans. Timothy S. Stone, of Worcester.

Cross-int. 6. Please state your reasons for this belief.

(Objected to for cause.)

Ans. I take my reasons from what Mr. Stone told me, principally.

251 Cross-int. 7. When did he tell you?

(Objected to as above.)

Ans. In 1848.

Cross-int. 8. What did he tell you?

(Objected to as above.)

Ans. He told me he sent down to Stoughton and got a boot-stretcher; Mr. Howe was at work for him at that time; it was a new thing; they had never seen one before like it; he called Mr. Howe's attention to it, and wanted to know if it could not be changed into a boot-tree; they talked it over and came to the conclusion that it could be so changed. Mr. Howe then took hold of it and got up a boot-tree; that the boot-tree belonged to him more than to Mr. Howe.

Cross-int. 9. At that time, then, you believed that Mr. Howe was not the inventor of the boot-tree; and you believe so now, don't you?

Ans. I do and did.

Cross-int. 10. Mr. Stone is now living, isn't he?

(Objected to as above.)

Ans. He was a few days ago.

Cross int. 11. Has he lived in that neighborhood since 1848?

Ans. I have not known of his living away.

Cross-int. 12. From '62 to the first of 1865 you say you made no new trees. State again, if you please, the reason why.

Ans. I said I only made new ones for Mr. Howe. The reason was that Mr. Howe, or Mr. Godfrey, got the Howe patent extended. And Mr. Godfrey notified me that Mr. Howe was going to have the management of it, and Mr. Howe would not give me the right to make any unless I made them for him.

Cross-int. 13. (De bene.) Why was it that you were afraid of the Howe patent, when you believed it to be invalid?

(Objected to because it does not appear that he was afraid of it, but only that he did not choose to infringe it, or to do what he supposed would be infringment of it.)

Ans. I did not believe it to be invalid.

Cross-int. 14 Please read your ninth cross-interrogatory and answer, and state again whether you believed the Howe patent to be invalid from 1862 to the fall of 1864.

252 (Objected to because immaterial and because it calls for a comparison of one immaterial question with another.)

Ans. I believed it to be valid at that time.

Cross-int. 15. Do you believe it to be valid now, and if not, why not?

(Objected to as above.)

Ans. I don't know but what the Howe patent is valid, but I don't believe the incline plane tree infringes it.

Cross-int. 16. (De bene.) Have you ever paid tariff to any one under the Howe patent; if so, to whom and when?

(Objected to because immaterial and new matter.)

Ans. I have, to B. D. Godfrey, in Feb., 1856, and to Wm. R. Bliss, from 1848 to 1854.

Cross-int. 17. (De bene.) State fully your connection with the boot-tree business from 1847 to 1854?

(Objected to because not material and not in reply to direct examination.)

Ans. Some time in '47 I went to work for Messrs. Howe & Sessions in Heywood's building, on Central street, Worcester, making patterns. In about a year Howe & Sessions failed up, owing me six hundred dollars—that is the way the papers were made out Howe & Sessions. Mr. Wm. R. Bliss and myself then made arrangements to take the boot-tree business, and we carried it on until 1854.

Cross-int. 18. (De bene.) Where was Mr. Howe at time of the failure?

(Objected to as above.)

Ans. At Hartford, Ct.

Cross-int. 19. How long before the failure was it that he left the business.

Objected to as above.)

Ans. I could not state the exact time. I should think about two months.

Cross-int. 20. When was the failure? State as near as you can.

(Objected to as above.)

Ans. Somewhere about Sept. 1st, 1848.

Cross-int. 21. (De bene.) State fully the arrangement under which you and Wm. R. Bliss manufactured trees.

(Objected to as above.)

Ans. The first arrangement was, I was to buy the stock and
253 fixtures and put my time in, and he was to furnish the patent: we were to share alike in the profits. Afterwards we made another arrangement, by which we were to take another man in. I don't recollect the exact terms of the arrangment.

Cross-int. 32. (De bene.) Who was the man, and how long did that arrangement continue?

(Objected to as above.)

Ans. Henry Dorman. I think he had a middle name which I have forgotten. I should think this arrangement continued about eleven months.

Cross-int. 23. (De bene.) When did this arrangement terminate? State as exactly as possible.

Ans. The first of April, 1854, I think.

Cross-int. 24. (De bene.) State particularly and in detail your connection with the boot-tree business from the time that arrangement terminated until Jan., 1855.

(Objected to as above.)

Ans. I think I had no connection with it whatever. I was sick.

Cross-int. 25. Up to 1854 you were in business at Worcester. Please state particularly in what places you carried on business at Worcester, and give the dates of your various changes as near as you can.

Objected to as above.)

Ans. As near as I recollect now, I was in Heywood's building till 1850—the winter of 1850 and '51, the latter part of the year, I think. I removed to Court Mills the first of 1851, and stayed till the fall of '51, when I removed to Merrifield's building.

Cross-int. 21. Are these all the places where you carried on business in Worcester from '47 to '54?

Ans. All the places where we had a regular shop. We did work at other places.

Cross-int. 27. What kind of work and what other places? State generally.

Ans. We had a shop fitted up at the house of Mr. Bliss in his back room; also, a place at Cyrus Bliss's boot shop, a part of the time, for the same work.

Cross-int. 28. Are there any other places where you did work of any kind on boot-trees in Worcester during the time inquired of?

Ans. Not that I recollect. I used to go around sometimes and fit up trees.

254 Cross-int. 29. Are there any other place or places in Worcester where you had work done of any kind on boot-trees? I mean in the manufacture of trees, and do not include founder's work.

Ans. There was.

Cross-int. 30. State particularly all such places and the times when you had work done.

Ans. Mr. Reed did more or less work for me. He had a shop in the room below me in Merrifield's building; also Mr. Brown, in the same building; his room was on Exchange street. Jere Valentine also worked for me. His place was on Central street; also there was a man in Henry Goulding's shop who did some work—I don't know his name; the shop was on Union street. Then there was a Mr. Charles E. Wilder, in Heywood's building on Central street. I don't think of any more.

Cross-int. 31. State particularly what work you had done at these places.

Ans. Mr. Reed fitted up iron work for me; Mr. Brown did iron turning and planing. Mr. Valentine and the man in Goulding's shop made some wood work. Wilder made table stands.

Cross-int. 32. Please describe more fully the kind of work done by Valentine and in Goulding's shop.

(Objected to as immaterial.)

Ans. They got me out some wooden backs and fronts of boot-trees—only a very few.

Cross-int. 33. State when, as nearly as you can.

Ans. Mr. Goulding's some time in 1850, I think. Valentine a year or two afterwards.

Cross-int. 34. Now, if I understand you, you have mentioned every place in Worcester where you carried on business or where you had tree work done, except foundry work, from '47 to '54; am I right, or is there any other place or places in Worcester?

Ans. I think there are other places not mentioned, where I had some tree work done. I do recollect other places now—some I had

done at Court Mills by a man named Brimhall. There were two men in company in a small shop on Union street. I don't think of any others now.

Cross-int. 35. Did you have any place of business out of Worcester during that time?

255 Ans. I did not.

Cross-int. 36. Did you have any tree work done out of Worcester during that time? I mean tree work of any kind not including founder's work. If so, where, and by whom? State fully.

Ans. I did. Mr. Whittemore, in Housatonic, Mr. F. Drury, in Warren, did some work. Some was done by a Mr. Stevens, in Boston, but I think this was not done in my name. I think I had some one in Nova Scotia to do some work, but of this I am not positive. J. P. Brown, of St. Stephens, did the work. I am not positive as to the time, but I think it was in 1851. These are all I know or think of at that time.

Cross-int. 37. You say there are some other differences inside between the "Pattern Lewis No. 2," and the casting of "Exhibit C. H. T." Please point out as minutely as possible every difference not already mentioned, described between that pattern and that casting, and compare especially the front part of the casting now hidden by the wood with the corresponding part of the pattern.

Ans. In order to do that the wood should be removed. That being taken off, the witness says: I find the part where the wood goes on about one-quarter of an inch shorter in the casting than in the pattern; that the flange on the casting is wider than the flange on the pattern. I mean the rib on the front part, (of which there are two,) one on each side of the slot in which the rod works; that the slot is not so wide on the casting as on the pattern. At one end, the casting has been broken and some straps of iron put on, so that I can't tell so well about it. I also find some defects in the casting, some marks, which do not show on the pattern. I find the casting between the rib and side brass wider than the corresponding part of the pattern; also that the upper end of the foot socket in the pattern is considerably wider than the casting. I don't think of any other difference now.

Cross-int. 38. Are you, or have you ever been, practically acquainted with the founders' trade?

Ans. I have got a great many castings from the foundry, and have made a great many patterns to get castings from.

Cross-int. 39. How many of the last differences, I mean those mentioned in your 37th cross-answer, may be accounted for by the

256 changes made in fitting the casting, and the changes made in the mould, by rapping the pattern before taking it out of the sand?

Ans. Not any, in my opinion.

Cross-int. 40. You were present, were you not, during the examination and cross-examination of Octave Beauvais?

Ans. Most of the time, not all of it.

Cross-int. 41. In your opinion he swore falsely, didn't he, when

he testified that the youth's tree Mr. Newton had about June, 1865, was a new tree, and not a second-hand one, and was one of your new pattern?

Ans. He testified falsely as to Mr. Newton's having a new tree in 1865. Mr. Newton had no new tree of me in '65 of any kind.

Cross-int. 42. Is the tree now before you marked "Youth's, G. D. N.," the identical tree Mr. Newton had of you in June, 1865?

Ans. It is.

Cross-int. 43. How do you know it to be the same, and not one like it? State fully.

Ans. I know by being familiar with it, and by marks on it, and by knowing to whom I sold it, and from whom I got it, and that it did not go out of my possession till I let Mr. Newton have it. When I took it from Mr. Newton I put a mark on it—a X on the inside of the brass.

Cross-int. 44. State fully the history of that tree, when it was made, when, and to whom sold for the first time, and when, and from whom repurchased by you.

Ans. The tree was made during the winter of '57–'8, sold to Furbish & Wheeler in '58, and purchased back by me somewhere in December, 1864. It was sold to Mr. Newton the last of June, 1865.

Cross-int. 45. Do you recollect the tree "Bradish, T. G. Kent?" Look at the tree marked "Bradish, T. G. Kent," and state, if you know, when that tree was made.

(Objected to as not matter of direct examination.)

Ans. It was made in 1859, and sold to the Norwich Boot and Shoe Company, and bought back by me in the summer of 1864 with a lot of others. None of them had been used.

Cross-int. 46. How many trees did you buy from the Norwich Boot and Shoe Company?

(Objected to as above.)

Ans. Five or six; I can't be positive which.

257 Cross-int. 47. When did you sell tree marked "Bradish, T. G. Kent," to that company?

(Objected to as above.)

Ans. In the winter of '59.

Cross-int. 48. Since your dissolution of copartnership with R. L. Lewis, where have you manufactured trees? and how much of that time have you been engaged in such manufacture?

Ans. Up to 1863, I manufactured in the Washington street machine shop, Worcester; that is, to the fall of 1862, as before explained.

Cross-int. 49. State fully where you have had centre-piece castings made during that time.

(Objected to as not matter of examination-in-chief.)

Ans. Wm. A. Wheeler, of Worcester, Mr. Fulton, of Worcester, John Martin, Heal, Brittain & Ford, of Worcester.

Cross-int. 50. Didn't Willard Jones, or the firm he was connected with, cast some centre pieces for you during that time, from '55 up to the present date?

Ans. Never to my knowledge. If any were got out there it was unbeknown to me.

Cross-int. 51. (De bene.) State more fully, if you can, the arrangement you made with Benjamin D. Godfrey for a license or authority to make trees under his patents, or under any patent owned by him. State especially all that passed between you in regard to what particular patent or patents you were licensed or authorized under.

Ans. Mr. Godfrey came to my place and proposed to buy the Howe patent, if I would buy out Mr. Bliss's stock, and go on and make trees and pay him a tariff. I told Mr. Godfrey I would do it if he would give me the exclusive right. He said he wanted the privilege to have one shop himself. After talking some time, I agreed to pay him five dollars on every tree I made, and he was to keep all others from making them, except what was made in his shop in Milford. The result was that he bought the Howe patent, and I bought the stock and stuff of Alonzo Bliss, and I went on to make boot-trees under that agreement, and we never had any other agreement. I continued to make under that agreement until the fall of 1862, as before explained.

258 Cross-int. 52. (De bene.) When was this conversation with Godfrey? State as exactly as possible.

Ans. Either in July or August, 1855.

Cross-int. 53. (De bene.) Was this the only arrangement or agreement you ever made with Godfrey in regard to paying tariff for the trees you manufactured?

Ans. I think it was.

Cross-int. 54. (De bene.) Are you not sure as to this?

Ans. I am sure anywhere about that time.

Cross-int. 55. (De bene.) Do you mean that you may have made some other agreement or agreement, but not about that time? If so, state fully any other agreement or arrangement, and when it was made.

Ans. I think somewhere about '59 or '60. I think there was something said by Godfrey in regard to paying this license. I objected to paying anything because he had not kept his agreement to keep other parties from manufacturing. He threatened to sue me, if I recollect, and said I ought to pay him. I said I had not, because others had made boot-trees. He then wanted to know if I would pay him if Charles T. Eames would. I told him if he could collect of Mr. Eames I would pay. I knew Mr. Eames would not pay—that is all the agreement.

Cross-int. 56. (De bene.) Where did this conversation take place? and was that agreement reduced to writing or not?

Ans. In the cars between Framingham and Boston. I think there was something to that effect put in writing at Mr. Godfrey's office in Boston.

Cross-int. 57. (De bene.) Have you stated the substance of that conversation fully? If not, please do so.

Ans. I have to the best of my memory.

Cross-int. 58. (De bene.) Did Godfrey at that time, claim that

you owed him only five dollars per tree, or did not he claim that you owed him ten dollars on each man's tree?

Ans. In our conversation he acknowledged I did not owe him anything. But he said he had lost a great deal of money on the boot-tree and I had made a good deal, and ought to pay him some-
259 thing. In the written agreement I did not take much notice of what he did claim, as I did not care anything about it.

Cross-int. 59. (De bene.) Look at the paper now shown you, marked "Exhibit Godfrey, N. A. P., examiner," and state whether that is the written agreement referred to.

(Objected to as not subject of examination-in-chief.)

Ans. I should think it was.

Cross-int. 60. (De bene.) Didn't you then or about that time furnish to Mr. Godfrey the number of trees made, as expressed in the bill making part of that exhibit?

(Objected as above.)

Ans. I have no recollection of doing so.

Cross-int. 61. (De bene.) What conversation did you have with Mr. Godfrey, or any one representing him, between February 21st, 1856, (the day you settled for all trees previously made under your agreement with Mr. Godfrey,) and December 29th, 1859, the date of your agreement in writing? I mean in regard to payment by you of tariff.

(Objected to as above.)

Ans. Mr. Godfrey did tell me at one time between these dates, that he should not claim anything of me until he had made the others pay; I mean the others who were making boot-trees. This is all the talk we had on the matter.

Cross-int. 62. (De bene.) You say Godfrey proposed to buy the Howe patent when you made your first arrangement with him in July or August, 1855. Are you sure of that?

Ans. I am.

Cross-int. 63. You state in answer to the 4th interrogatory of the plaintiff in the case of Godfrey *vs.* Shumway, superior court, Worcester, ss., in this State, as follows: "In September '55, the plaintiff came to me and pretended to have a patent which would cover the kind of boot-tree which I was then and for some four years previous thereto had been manufacturing. I said to him that I knew nothing of his patent or its validity." Is this statement true, or is the statement contained in your answer to the 51st cross-interrogatory?

(Objected to; first, because not matter of direct examination; secondly, because it assumes, as a fact, that a certain answer was made at some time by the witness, not in this case; and thirdly,
260 because it asks him to compare such supposed answer made on some former occasion, to a third party, with another answer made on cross-examination here, and so is incompetent. Question withdrawn for the present.)

Cross-int. 64. (De bene.) Before answering the last question, look at the exhibit now shown you marked "Exhibit Shumway, Cross

No. 1, G. D. N.," and read in that, for your information, the language above quoted, and such other parts of the exhibit as you may see fit, and then answer the last question.

(Solicitor for defendant understanding that the exhibit referred to purports to be a certified copy of certain proceedings of record in one of the courts of Massachusetts in a suit by B. D. Godfrey *vs.* the deponent, objects to the introduction thereof in evidence in this case for the purpose, as is presumed, of showing a contradiction of some of the witness's statements made on cross-examination; first, because it is incompetent for complainant to contradict witness as to the new matter drawn out on cross-examination by him; and secondly, because witness cannot know whether the exhibit shows correctly what answers were made by him on a different occasion; also because the question assumes an incongruity between the two.)

Ans. The statement in the exhibit, I think, is a mistake. The last one, I am positive, is true.

Cross-int. 65. (De bene.) In the statement in the exhibit, what patent did you then refer to as one you knew nothing of, and nothing as to its validity?

(Objected to as last above specified, and because immaterial.)

Ans. I don't know that I referred to any. I don't recollect that I ever made the statement.

Cross-int. 66. Do you mean to testify that you do not believe that you filed in that court sworn answers to certain interrogatories propounded to you by the plaintiff in that case?

(Objected to as above.)

Ans. I do not.

Cross-int. 67. (De bene.) Now read, if you please, the eighth answer in that exhibit, and state whether you desire to make any change in your answer to the 55th, 56th, 57th, and 58th cross-interrogatories.

(Objected to as incompetent, because new matter.)

Ans. The answers I have made are as near as I remember
261 now. But I do recollect of his saying that he was having a devilish hard time. Since this suit has been pending I have taken great pains to refresh my memory by looking up minutes.

Cross-int. 68. Look at patterns now shown you marked "Lewis Nos. 1, 2, 3, and 4," and state, if you know, by whom they were made.

Ans. I should think they were made by me. They look very much like those I made.

Cross-int. 69. State when you made them, giving the dates of each, as nearly as you can.

Ans. I could not tell anything about when I made them.

Cross-int. 70. They seem to have been altered in some slight respects since they were made. Can you say whether they have or have not been so altered; and if so, state as nearly as you can when they were so altered.

Ans. I should think there had been alterations made, and repairs done on them; but when I can't tell. I don't know whether they

have been altered or repaired or not. They have not been in my possession since April, 1863, and I don't know what has been done on them since.

Cross-int. 71. Before April, 1863, had they been altered?

Ans. I cannot state whether they had been or not.

Cross-int. 72. You have admitted in this case that the centre-piece in tree marked "Howe, N. A. P.," was cast from pattern "Lewis No. 3." Please compare that pattern with that casting as to length, and state how they compare in that respect, giving the measurements as near as possible.

(Objected to because of the assumed admission, also because the comparison requested is not in reply to direct examination.)

Ans. I do not know that I have admitted that that casting was taken from that pattern. I have not compared the casting and pattern to see, and did not do so at the time it is stated I admitted it. I did state that I was willing to admit it. I have no tools here to do it with, and don't wish to take up my time unless it is needed.

Cross-int. 73. I hand you now a pair of calipers and a pair of dividers and a foot rule. Please answer the last question.

(Solicitor for defendant objects to such mode of cross-exam-
262 ination, because it relates to new matter, and because witness is not here to make evidence, but to testify to that which he already knows, and he hopes the witness will decline to occupy time, as requested by complainant.)

Ans. I respectfully decline taking up my time doing it.

Cross-int. 74. What instruments did you use in your comparison of the pattern "Lewis No. 2," with the casting of "No. 1, C. H. T.?"

Ans. I had a rule, a divider, and caliper.

Cross-int. 75. Compare the pattern "Lewis No. 3" with the centre-piece casting of tree marked "Howe, N. A. P.," as you compared pattern "Lewis No. 2" with the centre-piece casting of "No. 1, C. H. T.," proceeding step by step, as in the latter comparison, referring to your 34th and 35th direct answers, and your 37th cross-answer for information.

(Same objection as to cross-question 73.)

Ans. I decline to do so, unless there is any necessity that I should.

(Solicitor for complainant here requests the magistrate to inform the witness that it is necessary to answer every question put to him. Solicitor for defendant requests magistrate to inform witness that he is not required to answer questions, except those which call for information which he already has, and that he cannot be required to make examination, in order to qualify himself to answer as to facts not known to him, and that such mode of examination is irregular, and calculated to protract unduly the taking of this deposition.)

Ans. I do not wish to do it.

Cross-int. 76. You mean you refuse to do it, don't you?

Ans. I refuse to examine the tree as an expert.

Cross-int. 77. Will you examine the "Howe, N. A. P.," tree, and compare it with the pattern "Lewis No. 3," as you examined the "No. 1, C. H. T.," tree, and compared that with pattern "Lewis

No. 2?" I don't wish you to examine this an expert, unless you examined that as an expert. What I do want is to show that you are mistaken in your testimony, given in regard to the pattern "Lewis No. 2" and centre-piece casting of "No. 1, C. H. T.," by causing you to follow the same course with the pattern "Lewis No. 3" and centre-piece casting of "Howe, N. A. P." Please answer distinctly whether you will or will not make that comparison.

(Objected to as in cross-interrogatory 73; also because the
263 alleged error cannot by possibility be shown in any such way, and the inquiry has no relation to the other comparison instituted by the witness.)

Ans. I cannot do it, unless I examine it as a pattern expert; and that I have declined already.

Cross-int. 78. Do you mean to swear that you made a comparison between "Lewis No. 2" and "No. 1, C. H. T.," as an expert?

(Objected to because immaterial, and as not calling for any matter of facts in controversy.)

Ans. I made close measurements, compared it closely, and spent two or three hours over it, the same as I should if I had been an expert.

Cross-int. 79. Please answer the last question categorically, if you can.

(Objected to as above.)

Ans. I do not know whether as an expert or not.

Cross-int. 80. Now please to answer the 77th cross-interrogatory categorically, if possible.

(Objected to because answered sufficiently categorically already.)

Ans. I will not.

Cross-int. 81. Does not the centre-piece casting, or tree marked "Howe, N. A. P.," differ from pattern "Lewis No. 3" in precisely the same respects as the centre-piece of casting "No. 1, C. H. T." differs from pattern "Lewis No. 2?"

(Objected to as immaterial, and new matter, and because witness has already declined to make the comparison required.)

Ans. I do not know.

Cross-int. 82. Please answer cross-interrogatories 73 to 81 inclusive, substituting in them the words "Lewis No. 2" wherever the words "Lewis No. 3" occurs, and the tree marked "Leland, N. A. P.," wherever the tree marked "Howe, N. A. P.," is spoken of.

(Objected to as before, and also because of the irregular and unusual mode of putting the inquiry relating to many matters as one question. The question is withdrawn.

Cross-int. 83. Please compare the pattern marked "Lewis No. 2" with the casting marked "Leland, N. A. P.," as to length, and state how they compare in that respect, giving the measurement as nearly as possible.

Ans. I decline taking any measurements or comparisons.

264 Cross-int. 84. Does not centre-piece casting of tree marked "Leland, N. A. P.," differ from the pattern "Lewis No. 2"

in precisely the same respects as the centre-piece casting of "No. 1, C. H. T." differs from the same pattern?

(Objected to as above.)

Ans. I do not know.

Cross-int. 85. Is not the centre-piece casting of tree marked "Leland, N. A. P." exactly like the centre-piece casting of tree "No. 1, C. H. T.?" I mean so nearly like it that careful measurements of all the parts of each will correspond.

(Objected to as above.)

Ans. I do not know.

Cross-int. 86. Does not the pattern marked "Lewis No. 1" compare exactly in all its parts with the centre-piece casting of "Rice No. 3?" I mean making necessary allowance for the shrink of the metal, and the effect upon the mould of loosening the pattern, so as to withdraw it from the mould.

(Objected to as above.)

Ans. I do not know, for I have not compared them.

Cross-int. 87. And I suppose you will not compare them? Am I right?

Ans. You are.

Cross-int. 88. How often have you repaired the trees marked "No. 1, C. H. T.," and "Rice No. 3?"

Ans. I never have repaired either of them, to my knowledge.

Cross-int. 89. Where does Mr. C. H. Tilton get his repairs done on his boot-trees, if you know?

Ans. I have done some of them, I don't know how much. I only know where else by hearsay.

Cross-int. 90. When were the trees marked "Leland, N. A. P.," and "Howe, N. A. P.," made?

(Objected to as not subject of direct examination, and immaterial.)

Ans. I do not know.

Cross-int. 91. Of whose make are those trees?

(Same objection as last.)

Ans. They look like my make. If they are not, they are a very close counterfeit.

Cros-int. 92. Can you say when you used the patterns marked "Lewis Nos. 1, 2, 3, 4," in your manufacture of trees? State as nearly as you can.

265 Ans. I can't state the time, the exact time; I used those or some like them in '58 and '59.

Cross-int. 93. You have testified that you ceased to make new trees on your own account in 1862; when did you begin again?

Ans. Some time in May or June, 1865, I think.

Cross-int. 94. Prior to June, 1865, how many trees had you repurchased since you stopped the manufacture of new ones in 1862? State as nearly as you can.

(Objected to because new matter, and as immaterial.)

Ans. I should think between five and eight hundred.

Cross-int. 95. During that time how many did you sell? State as nearly as you can.

(Objected to as above.)

Ans. I had sold them all except about fifty. I had about fifty then on hand.

Cross-int. 96. Before, say September, 1864, how many had you bought? State as nearly as you can; I mean since 1862.

Ans. I should think between four and five hundred; but I am not positive.

Cross-int. 97. And how many sold during that time?

(Objected to as above.)

Ans. I should think I had about 75 or 100 in Sept., 1854. I don't recollect particularly now, as I was buying and selling all the time.

Cross-int. 98. Do you mean to testify that from 1862 to April, 1865, you kept a considerable stock on hand?

(Objected to as above.)

Ans. I do.

Cross-int. 99. What was the average stock on hand up to April, 1865, after Mr. Howe left Worcester?

(Objected to as above.)

Ans. Most of the time from fifty to one hundred. When I say I had them on hand, I don't mean that they were on hand in my shop, but that I had them bought.

Cross-int. 100. Do you ever let trees? If so, to what extent?

(Objected to as above.)

Ans. I do. I generally have from twenty-five to fifty let out, sometimes more.

266 Cross-int. 101. About how many new trees have you made since you commenced in 1865?

(Objected to as irrelvant and intended to obtain evidence for use elsewhere.)

Ans. I have not made but very few, as I could buy cheaper than I could make them.

Cross-int. 102. Prior to 1855 did you make any other trees than the trees marked "Rice No. 3" and "No. 1, C. H. T.," and others substantially like them?

(Objected to if it relates to any other trees than "Rice No. 3" and "No. 1, C. H. T.")

Ans. I did.

Cross-int. 103. What kind of trees were those?

(Objected to as above.)

Ans. I made what was called the Bliss or brass tree.

Cross-int. 104. To what extent did you manufacture the Bliss or brass trees?

(Objected to as not subject to direct examination.)

Ans. I don't recollect particularly. I made a great many.

Cross-int. 105. You manufactured them, didn't you, up to the spring of 1854?

(Objected to as above.)

Ans. I did.

Cross-int. 106. Prior to '55, did you make any other trees like "Rice No. 3" and "No. 1, C. H. T.? If so, when did you make your first tree of that kind?

Ans. I did; I made the first in 1850.

Cross-int. 107. About how many of those trees did you make before you left the tree business in the spring of 1854? State as nearly as possible.

Ans. As nearly as I recollect I should think some fifteen or twenty.

Cross-int. 108. Do you regard that estimate as high or low?

Ans. I should not think there was any more than that—possibly not so many.

Cross-int. 109. If I understand you, you made none of any kind from the spring of 1854 till you went into partnership with Reuben L. Lewis.

267 Ans. I don't recollect that I manufactured any new ones during that time. I had some finished up; some that were partly done.

Cross-int. 110. How many, and what kinds did you have finished up to that time?

Ans. There were four of them; what was called the Shumway tree, like "Exhibit No. 1, C. H. T.," and "Rice No. 3."

Cross-int. 111. Where were these trees made? I mean all like "Rice No. 3" and "No. 1, C. H. T."

Ans. Some of the iron work was done by Reed, the man I spoke of yesterday, in Merrifield's building. Some of it was done by Mr. Brown of Worcester; some of the wood-work was got out up to Court Mills. The putting together and finishing up I did myself in Merrifield's building, all except the four last ones. These were finished and put together in a shop on Front street, Worcester; I don't think of the man's name just now. This was before the fire.

Cross-int. 112. What became of these trees? I mean all of them.

Ans. I could not tell what became of all of them. The first I made I sold to Mr. McFarland, then of Worcester; I don't recollect his first name. After that I sold him two more; I should think about six months afterwards, in '51. I also sold one to Mr. Wheelock, of Mendon, in 1851 or '52. I put one into the shop of A. Tilton & Co., but did not sell it. Simpson Jones had one. I let Charles Fales and John M. Fales, of Brookfield, have one each. Mr. Morgan had one, which I afterwards took back, and let Mr. C. W. Furbush, of Grafton, have it. Mr. Newton, the defendant in this suit, had one. Mr. Calvin Barber, of Hopkinton, had one. There might have been others, but that is all I now think of.

Cross-int. 113. Were all these trees alike in their mechanism for distending?

Ans. They were.

Cross-int. 114. And each had two or more backs?

Ans. They did.

Cross-int. 115. How many sizes did they embrace—that is, those trees made before 1855?

Ans. I think now only two, but I can't be positive. I think
268 they were boys' and men's size. I think there were no youth's size, but am not positive.

Cross-int. 116. State as minutely as possible every difference be-

tween the boys' sizes of those trees, and the tree marked "No. 1, C. H. T."

(Objected to because it implies there were differences, "No. 1, C. H. T.," being boys' size.)

Ans. I don't know that there was any difference in the boys' tree.

Cross-int. 117. And all the men's sizes, I suppose, were like Rice?

Ans. I am not sure that they were. My impression is now that I made a difference between them. I think I made an alteration in the pattern of the centre piece. I was changing a good deal, experimenting.

Cross-int 118. Who did the castings for the centre pieces of those trees?

Ans. Mr. Wm. A. Wheeler did the first ones, perhaps half a dozen. After that Benjamin Walker, of Worcester, on Union street; perhaps he had a partner, but I don't recollect.

Cross-int. 119. Did you get this half-dozen from Wheeler all at once? If so, when?

Ans. I did not; but some time in 1850 and 1851; not more than one at any one time, I should think.

Cross-int. 120. From Walker did you get them in the same way? If not, how and when?

Ans. I had more at a time from Walker. I got them from him in 1852 and '53; there might have been some as late as the early part of 1854.

Cross-int. 121. What proportion of these trees were men's, and what boys'?

Ans. If I recollect right, there were only three or four boys' sizes.

Cross-int. 122. What became of the centre-piece patterns used in the manufacture of these trees made prior to 1855?

Ans. I think they were burned up in the great fire.

Cross-int. 123. How soon after this did you get new patterns for centre-piece castings for trees like "Exhibit Rice No. 3?"

269 Ans. In the fall of 1855, or the early part of winter of '55 and '56.

Cross-int. 124. What kind of trees did you make, if any, after you finished, before you have spoken of in 1854 up to the fall of 1855, or early winter of '55 and '56?

(Objected to because not matter of examination-in-chief.)

Ans. I made the four-incline tree, and the brass or Bliss tree.

Cross-int. 125. When during that time did you make the brass or Bliss tree, and when the four-incline plane?

Ans. I made the four-incline plane from the fore part of Jan., 1855, to August, 1855, and the brass or Bliss tree from that time up to Jan., 1856; that is, I finished up what stock I had bought from Alonzo Bliss of that description, but I did not get out any new work for them.

(This witness having been under examination for two days, and living at a distance from this place, is requested to sign this deposition, as the counsel for complainant is unwilling to proceed further at this time, but desires an adjournment until to-morrow. This request

is made lost, if witness should be unavoidably prevented from further attendance, the testimony thus far taken may not be lost.

Solicitor for complainant desires to state that it is now one-quarter to seven o'clock p. m., and that he protests against this incomplete deposition being signed, and will protest against its use unless it is finished.)

E. L. SHUMWAY.

Adjourned to Thursday, Sept. 27th, 11 o'clock a. m.

Cross-int. 126. You made no trees from spring of 1854, when you ceased manufacturing trees in Merrifield's building, up to Jan., '56, except the four changeable-back trees, the four-incline trees, and the brass trees, did you?

Ans. I think I did before Jan. 1st, 1856. I meant, by my last answer, that I did not resume making the two-incline tree until about Jan., 1856.

Cross-int. 127. While in partnership with Lewis you did not make anything but four-incline trees. Do you mean to so testify?

Ans. I do.

270 Cross-int. 128. When did that partnership terminate?

Ans. It terminated the last of August, 1855; but I did not get settled up with him till the last of September.

Cross-int. 129. Do you mean to be understood, then, that you and Lewis, while in partnership during August, '55, made brass trees?

Ans. No, sir.

Cross-int. 130. What kind or kinds of trees did you and Lewis make while in partnership?

Ans. The four-inclined plane tree only.

Cross-int. 131. After the dissolution and before December, '55, what kind or kinds did you make?

Ans. I finished up some of the four-incline trees and the brass trees, and no others, unless in the very last days of November.

Cross-int. 132. Then, when you state, in your fourth answer to plaintiff's interrogatories contained in the "Exhibit Shumway, Cross No. 1, G. D. N.," that the trees you were making in Sept., '55, you had been making "for some four years previous thereto," you refer to the brass trees, don't you?

(Objected to because it assumes the answer to be correctly stated in the question, and because what the witness said on another occasion, in another suit, is not material to this inquiry, but it is introduced now on cross-examination as new matter.)

Before answering, look at the exhibit, and satisfy yourself whether the answer referred to is correctly stated in my question.

Ans. I don't recollect of making any such statement. If I did, I was mistaken.

Cross-int. 133. (De bene.) When you settled with Mr. Godfrey in Feb., '56, what trees did you pay tariff on?

Ans. On everything that I had made except those I had of Alonzo Bliss, which were partly finished at the time I bought him out.

Cross-int. 134. (De bene.) In other words, you paid tariff, didn't you, for all the four-incline trees you ever made, and for all the two-incline trees you made after the dissolution with Lewis?

Ans. I did, under the Howe patent.

Cross-int. 135. You have testified that you made brass trees
271 up to the spring of 1854, and during the fall and some part of the winter of 1855, and that you have since sold them. Look at the exhibit now shown you, marked "Shumway, Cross No. 3, G. D. N.," especially the last paragraph, and state which is true, your previous testimony as to this, or that statement in the exhibit.

(Objected to because not matter of examination-in-chief, and not material; and because the witness has not, in this deposition, stated that he, since the spring of '54, has manufactured brass trees; but simply that he finished up some bought of Alonzo Bliss, already in part constructed by said Bliss; and because witness is not bound to make the comparison required.)

Ans. I have not stated that I made them in the fall of 1855, but that I only finished up some that were made. The leg parts were made, and I only put on the feet and fitted them to boots, and so meant to have been understood in my former answer. There is a mistake in the date given in the exhibit. My testimony is true. When I made the affidavit I thought the date was 1853 instead of 1854.

Cross-int. 136. Look at the exhibit now shown you, marked "Shumway, Cross No. 2, G. D. N.," especially at the answers to the 3d and 4th interrogatories, and state whether they are true, or whether the statements contained in your 96th and 99th cross-interrogatories are true.

(Objected to for reasons stated in objection to 135th cross-int., and because of the assumed discrepancy which the interrogatory implies.)

Ans. I have no recollection of giving those answers in the exhibit. What I testified to yesterday is as near as I now recollect.

Cross-int. 137. Yesterday you testified that you had made and sold trees with two inclines, like "C. H. T.," as early as 1850. Will you now testify that you made a single tree before the summer of 1855?

Ans. I will.

Cross-int. 138. Will you now testify that you ever made a single tree with two inclines like "C. H. T.," or any tree with two inclines, before you made trees with four inclines; I mean either alone or in partnership?

Ans. I will.

272 Cross-int. 139. Look at the exhibit now shown you, marked "Shumway, Cross No. 4, G. D. N.," especially at the 3d to the 7th cross-interrogatories, and answers inclusive, and state which is correct—those answers, or the answers to the two preceding interrogatories?

(Objected to because the exhibit shown is not an original paper, and was not the subject of examination-in-chief; because it requests

a comparison between witness's present answers and supposed answers, given by him on a different occasion some years since; and because the question implies that both such supposed statements are conflicting, without first showing them to be so on asking the witness if they are so.)

Ans. The last statement is correct.

Cross-int. 140. Do you consider your memory as good as the average, or better than the average?

Ans. I have always thought it better than the average.

Cross-int. 141. If I understand you, you mean to testify strongly that you never paid Godfrey any tariff on any other than Jarvis Howe's patent of 1848. Do you mean so to testify?

Ans. I do.

Cross-int. 142. Now look at the 11th and 12th cross-interrogatories and answers in "Shumway, Cross No. 4," and state which is correct; your last answer, or the answers there contained.

(Same objection as taken to cross-interrogatory No. 139.)

Ans. I don't recollect anything about the other answer. The answer to 141st cross-int. is true.

Cross-int. 143. Do you mean to testify that you have no recollection of testifying as a witness against the extension of the Howe patent in the summer or fall of 1862?

Ans. I recollect that I did.

Cross-int. 144. Look at the 44th direct interrogatory, and answer in "Exhibit Shumway, Cross No. 4," and state whether that is correct, or whether your 141st cross-interrogatory is correct.

(Same objection as taken to cross-interrogatory No. 139.)

Ans. The answer to 141st cross-interrogatory is correct. I was under a mistake at the time of giving the other answer. When I made the agreement with Mr. Godfrey I did not know that he
273 had any patent except the Howe, which he said he had agreed to buy if I would make the arrangement with him.

Cross-int. 145. (De bene.) Were you and Lewis in company when you made that agreement with Godfrey?

Ans. I think Mr. Lewis had not gone out; but it had been decided that we should not be in company any longer than until we could get settled up.

Cross-int. 146. Mr. Godfrey has testified that you had conversation with him in 1854 about Lewis tree. State as fully as possible all the conversation you had with him on that subject prior to your partnership with Lewis, and state, as nearly as possible, when the conversation or conversations took place.

(Objected to as not subject of examination-in-chief.)

Ans. I think the first converation was in September, 1854. Mr. Godfrey came to my house in Worcester; he said he had got a new tree (I give the substance of what he said) which avoided the Howe patent, and he wanted I should go to making them. I then inquired how it was different from the Howe patent. Mr. Godfrey, not being a practical boot-tree maker, did not explain it fully so that I could understand it; but as near as I could understand it, I told him I

thought I had made something like it four years before, and that was claimed to infringe on the Howe patent. He wanted I should go down to his shop at Milford and see the boot-tree, and he would pay my expenses. I promised so to do in a few days. This is the substance of the conversation we had at that time, as near as I recollect. I was detained at home, so that I could not go down to Milford as I promised him, and in the course of eight or ten days I received a letter from him, stating that the boot-tree had been removed to Mr. Wood's shop in Upton, and was very anxious that I should go down and see it. I went down to Upton and saw the boot-tree, and it was different from what I understood it from Godfrey. It was a four-inclined plane tree, the back and front both moved out. After seeing it, I then thought it did avoid the Howe patent, and went to Milford to see Mr. Godfrey. He was not at home. I left word with some of his folks that I had been to see the tree, and thought very favorably of it. A few days after that I received another letter from Mr. Godfrey to come to Boston, either on Wednesday or Saturday.

274 I came and saw Mr. Godfrey, and told him what I thought of the boot-tree—that it did not infringe on the Howe patent, and that I could make a good thing of it by making some alterations. He asked me to go to making them, and I proposed to him to make some agreement. He said he could not, for he had not got it patented, but that he did not want any delay in making them, and getting them into use, and that he would do what was right by me. I then made arrangements to make them, bought stock, and got a shop ready. I think the last of December I saw Godfrey again, and told him I had got about ready to commence making his boot-trees, and wished he would send me up the one he had. He then asked me if I could not take Mr. Lewis into the shop and give him a chance to work. I told I should want help, and if Mr. Lewis could work, I should as lief have him as anybody. He then asked him to give him, Lewis, an interest in the business, and gave as his reason that he thought Mr. Lewis would be more interested to stay and do well than he would if he were to work by the day. He then told me that Mr. Lewis was not just right, and had been in the insane hospital, and that he wanted to get him away from him if he could. I gave my consent that Lewis should come in, but should have no management of the business, except in name. That is all the conversation I had with Mr. Godfrey, in substance, till after I made the trees.

Cross-int. 147. Now please state, as above, all the conversation you had with Mr. Lewis until the dissolution of partnership.

(Objected to because not matter of examination-in-chief, and not material.)

Ans. (Witness says he wishes to know what conversations are referred to, and he is referred to cross 146.) If you mean the conversation relating to the Lewis boot-tree, I state: When I went to Upton to see the tree, I inquired of a man to show me Mr. Godfrey's new tree. I showed Mr. Godfrey's letter to a clerk in Mr. Wood's shop. He told me where to go, and I went and found it, and found a man to work on it. I did not know him then, but afterwards learned that

he was Lewis. I told him I wanted to look at the boot-tree he was at work on; I examined it, and told him I thought it did get over the Bliss patent, as I called it at that time—meaning the Howe patent—
and that the Bliss tree would not be worth a cent if I should
275 go to work on them, if I could make arrangements with Godfrey. That was all the conversation I had with Lewis, and I did not, at the time, know his name. The next time I had a conversation with him was the last of December, after I told Mr. Godfrey to send up his boot-tree; the same man I saw at work on it in Wood's shop came and brought it. He then told me that his name was Mr. Lewis, and that Mr. Godfrey had sent him up with it, and had made arrangements for him to go into company with me to make them. I told him I should not be ready for him to do anything before some time in January. Along in January some time he came to the shop, and had a card with Shumway & Lewis written on it; he said Mr. Godfrey sent him with it. I told him I did not care what name it was called; that I should manage the business the same as I should if he wasn't there. He went to work the same as any other man. I think in July, '55, Lewis stated to me that the patent had been rejected at the Patent Office; it might have been in June, but I am not positive. That is all the conversation we had about the tree that I recollect of now. I did not feel satisfied with him, and did not make much conversation with him.

Cross-int. 148. You never said anything to Mr. Lewis about two incline planes, did you?

Ans. I don't recollect now that I did; I might, but I don't remember.

Cross-int. 149. Don't you remember stating in your affidavit in this case that you did?

Ans. I do not.

Cross-int. 150. Are you sure you did not?

(Objected to as incompetent.)

Ans. I do not know whether I did or not.

Cross-int. 151. Search your memory carefully, and state all you may recollect saying to Lewis in regard to trees you had manufactured before seeing his. State as fully as possible.

(Objected to because not matter of examination-in-chief.)

Ans. I don't now recollect stating anything which I have not before referred to.

Cross-int. 152. Didn't you tell him, when you first saw his tree, or at some subsequent time prior to the dissolution, that you
276 had made changeable back-trees before you saw his, or something to that effect?

Ans. I did not tell him so when I first saw his tree, that I know; but whether I have at some other time or not I could not now state.

Cross-int. 153. Look at the affidavit now shown you, marked "Shumway No. 5," and especially at the paragraph on the third page, beginning, "In consequence of information," and state whether the statement there made as to the conversation with Lewis is true

or not; and if it be true, state fully what was said about your boot-trees.

(Objected to as incompetent on cross-examination, and incompetent altogether.)

Ans. I don't recollect anything about that statement. I recollect giving an affidavit in this case. My boot-trees were not spoken of at that time.

Cross-int. 154. Did you not swear to that affidavit: "Shumway, Cross No. 5?" And if so, why did you swear that your boot-trees were spoken of at that time?

(Objected to as incompetent.)

Ans. When I swore to that affidavit I swore to what I believed to be true.

Cross-int. 155. Do you still believe that the four-incline tree is not an infringement of the Howe patent? If so, please state why it is not, in your opinion.

Ans. As I understand, it has been decided that no inclined plane tree is an infringement of it.

Cross-int. 156. Why did you believe that the four-incline trees did not infringe in 1855?

Ans. I have not stated that I did not believe it in 1855. In the early part of 1855 I didn't think it did infringe the Howe patent, because the back and front both moved from the centre. This was the only reason.

Cross-int. 157. When did you first believe that the four-incline trees did infringe?

Ans. In June or July, 1855. Perhaps I might alter that a little, and say that I thought it was about an even chance whether it did or not.

277 Cross-int. 158. Did you believe that the two-incline tree infringed before 1855?

Ans. I did.

Cross-int. 159. How long did you continue in that belief?

Ans. Until the fall of 1864, if the Howe patent was good for anything.

Cross-int. 160. Did you, previous to 1864, believe that the Howe patent was good for anything?

Ans. I did believe so at one time previous to 1864.

Cross-int. 161. At what time, and for how long?

Ans. I don't recollect the time at all; but I know there was a time when I thought it was doubtful.

Cross-int. 162. (De bene.) Did you believe the Howe patent good for anything, and that it covered the two-incline trees when you made your agreement with Godfrey in 1855, and when you paid him tariff in 1856?

Ans. I did; and that it covered all the machine trees.

Cross-int. 163. Now look at 36th to 39th interrogatories and answers, inclusive, in "Exhibit Shumway, Cross No. 4," and state if those answers are true, so far as they relate to the Howe patent.

(Objected to for reasons stated in objection to cross-int. 139; also because a repetition of a similar question put on cross-examination.)

Ans. I don't care to look at them.

Cross-int. 164. Do you refuse to read or hear read the interrogatories and answers above referred to?

(Objected to because the paper containing such supposed answers is not an original, and witness cannot know therefrom, if he would, whether he ever made the answers there given, also for the other reasons specified in objection to 139th cross.)

Ans. I have no wish to read what I don't know to be true and original papers.

Cross-int. 165. Did you testify, when you were examined as a witness in opposition to the extension of the Howe patent, that Mr. Alonzo C. Bliss offered to sell you the Howe patent in '55, as you thought; that he told you that you could have it at almost any price you had a mind to give him; that he wanted to realize something from it, and wanted to know if you would give him five hun-
278 dred dollars; that you told him you did not want it for any price, and that your reason why you did not want it for any price was that you were making a tree at the time you thought much better? I hand you a certified copy of your deposition, (Exhibit Shumway, Cross No. 4,) which you can refer to, if you please, to refresh your memory.

(Objected to as a new matter, and not open to cross-examination.)

Ans. I don't remember whether I so testified or not; but it is a fact, whether I did or not. I mean that it is a fact that I had that conversation with Alonzo Bliss.

Cross-int. 166. Do you mean that this conversation took place in 1855 or not?

(Objected to as above.)

Ans. I think I did.

Cross-int. 167. Are your reasons for not purchasing at any price correctly stated in the cross-interrogatory 165.

(Objected to as above, and also as irrelevant.)

Ans. That was one of the reasons, and was the one I gave Mr. Bliss.

Cross-int. 168. What did Godfrey say when you told him you had made trees something like the tree he was describing to you, four years before? I mean about your tree.

(Objected to as new matter, and irrelevant.)

Ans. I think I have already stated. I meant to do so if I have not. He said he thought I had not made any like it, and wanted I should go down and see it, and see if I had made anything like it.

Cross-int. 169. Please state as fully as possible all that ever passed between you and Mr. Godfrey in relation to what you call your tree, from the conversation above related until your settlement with him in 1856.

(Objected to as new matter, irrelevant, and already answered, in whole or in part, on cross-examination.)

Ans. When I made the arrangement with Mr. Godfrey, at the time he bought the Howe patent of Bliss, I told him I should want to make such a tree as I formerly made, not the Lewis tree, with

four inclined planes. He said he didn't care what I made, he
279 wanted I should make anything I could sell the most of, and pay him the most money.

Cross-int. 170. You are now ready to swear, I suppose, unqualifiedly, that you never told Godfrey that the feature of a changeable back was the thing in the Lewis tree which would give it the market, or anything to that effect?

Ans. I am.

Cross-int. 171. And also that you never said anything to that effect to Lewis?

(Objected to as above.)

Ans. I have no recollection of saying anything of the kind.

Cross-int. 172. Will you swear unqualifiedly that you never said to Godfrey or to Lewis that the Lewis tree you saw in Upton was the first tree with changeable backs you had ever seen or heard of, or anything to that effect substantially?

(Objected to as new matter and incompetent cross-examination.)

Ans. I will swear that I never did say any such thing.

Cross-int. 173. You say any such thing. Do you mean by that anything substantially the same in effect?

(Objected to as the meaning is obvious, also for reasons above given.)

Ans. What I mean is, I never told them that that was the first tree I ever saw with changeable backs.

Cross-int. 174. Do you mean merely to swear that you never used the particular words in which you have expressed the above answer, or do you mean that you never intended to convey that idea to them, or either of them, by any words?

(Objected to as incompetent, and as answered fully in cross-interrogatory 177.)

Ans. I never meant to convey the idea to them in any way or shape.

Cross-int. 175. You say you told Godfrey that what you have called your tree "was claimed to infringe on the Howe patent." Who claimed it to infringe? State all if more than one.

Ans. William R. Bliss. I don't know of any other man so claiming.

Cross-int. 176. He is dead, isn't he?

Ans. He is.

280 Cross-int. 177. Mr. Dorman worked for you, didn't he? If so, for how long?

(Objected to as immaterial.)

Ans. There was a Mr. Dorman who did work for me. There were two of the name. C. K. Dorman worked for me, I should think, three or four years. Henry worked for me eight or nine months, I should think, but am not positive; and after that was partner with me.

Cross-int. 178. Were all the trees you made with two inclines stamped as the brasses of "No. 1, C. H. T.," are stamped? I refer to the stamp "E. L. Shumway, maker, Worcester, Mass., patent

1850." If not, how many were so stamped, and when did you begin to stamp them so?

Ans. I intended they all should be; perhaps there might have been some which did not get stamped.

Cross-int. 179. What do the words "patent 1850" refer to?

Ans. To the time I first made that kind of a tree.

Cross-int. 180. They do not then refer to Wm. H. Upfield's patent, and never were so intended, were they?

(Objected to because the last question being new matter the witness cannot be controlled or contradicted in the answer given thereto.)

Ans. They do not, and were not so intended.

Cross-int. 181. Was that tree ever in fact patented by you, or did you ever apply for a patent on it?

Ans. No, sir.

Cross-int. 182. You were a witness for defendant in the case of Godfrey *vs.* Eames, were you not?

Ans. I was.

Cross-int. 183. You sold out your stock, tools, and fixtures connected with your boot-tree business to Mr. Howe, the complainant, in 1863, didn't you?

Ans. I did, the most of them.

Cross-int. 184. What did you retain?

(Objected to as immaterial and new matter.)

Ans. All my small tools; I don't recollect anything else.

Cross-int. 185. What did you buy from Mr. Howe when he left your former shop in Worcester, in 1864.

(Same objection as last stated.)

281 Ans. I could not state, for I don't recollect what I did buy of him.

Cross-int. 186. How many trees like "Exhibit C. H. T." did you sell Mr. Newton before 1855?

Ans. I don't recollect how many I sold him; but I think five or six.

Cross-int. 187. All in one order? If not, state the times, and how many at each time.

Ans. I think not in one order. As near as I recollect now, there were three orders; I think I had one order in 1853 for one tree; I think the next was some time in the winter or spring of 1854; my impression is that I made him four trees at that time; there were separate orders for each tree; I don't recollect distinctly.

Cross-int. 188. Look at exhibit now shown, "Shumway, Cross No. 5," especially at the top of the second page, and state whether the statement there testified to by you, in regard to the boot-tree sold to Newton by you is true or not.

(Objected to as a new matter, and incompetent otherwise.)

Ans. I think I was mistaken in the date in the affidavit.

Cross-int. 189. Do you mean both dates there mentioned, or only one? And are you right in the number of trees sold?

(Objected to as before.)

Ans. I have stated in this deposition that I was not positive; I mean in both dates. I am not positive about the number of trees.

Cross-int. 190. Look at exhibit now shown you, marked "Exhibit Howe, N. A. P.," and state what it is, and whether your signature is at the bottom of it.

(Objected to as new matter, and wholly irrelevant.)

Ans. A bill of sale to Mr. Howe signed by me April 6th, 1863.

Cross-int. 191. How many trees did you sell to C. H. Tilton or Tilton & Co. prior to 1855, and how many did he or they have of you?

(Objected to as irrelevant except as to shifting back trees.)

Ans. I don't recollect; I think C. H. Tilton had three. I put one into Tilton & Co.'s shop which I did not sell to them, and this is one of the three C. H. Tilton had.

Cross-int. 192. How many had Calvin Barber?

Ans. He had only one.

282 Cross-int. 193. What kind of trees were the three C. H. Tilton had?

Ans. One of them was tree now before me, marked "C. H. T." The other two were like it, but smaller, I think.

Cross-int. 194. How many to Wm. H. Comstock, of Milford, formerly of Mendon?

Ans. I can't swear that he had any of me, my impression is he had one or two brass trees.

Cross-int. 195. How many to C. W. Forbush, before '55 I mean?

(Objected to as immaterial.)

Ans. Two I think, one brass, and one two-incline changeable back tree.

Cross-int. 196. Did you sell more than one to Simpson Jones, before '55?

Ans. I don't recollect that I did.

Cross-int. 197. Look at exhibit now shown you marked "Beauvais, N. A. P.;" state what it is, and by whom it is signed.

(Objected to as new matter and irrelevant.)

Ans. A bill of sale signed by me.

Cross-int. 198. State why that bill of sale was given to Beauvais. State fully.

(Objected to as irrelevant and otherwise incompetent at this stage.)

Ans. Because I understood that Mr. Howe was having the papers made out to sue me, and I was owing Mr. Beauvais, and wanted to secure him, and not have any trouble in my business.

Cross-int. 199. You have made leg-stretchers, and used in them such inclines and cross-heads as you use in two-incline boot-trees, haven't you?

(Objected to as irrelevant.)

Ans. I have,

Cross-int. 200. How many trees did you and Lewis have when in partnership?

Ans. Between fifty and sixty.

Cross-int. 201. And you swear they were all four-incline trees, do you?

Ans. I do.

Cross-int. 202. In the settlement between you and Lewis he
283 allowed you five dollars a tree, with which to pay Mr. Godfrey, didn't he?

(Objected to as new matter.)

Ans. He did not.

Cross-int. 203. What did he allow you for that purpose?

(Objected to as above.)

Ans. In our settlement, Mr. Godfrey's bill was taken out, the same as any other bill where we had bought stock.

Cross-int. 204. Do you mean to be understood that you bore half and Lewis half of that bill?

(Objected to as before.)

Ans. I do.

Cross-int. 205. What did Lewis put into the business?

(Objected to as above.)

Ans. Nothing.

Cross-int. 206. What was his share of the profits?

(Objected to as above.)

Ans. After taking out all the expenses, I charged him interest on the capital invested, at 10 per cent., and then divided the rest equally. After so doing, Mr. Lewis owed me over one hundred dollars.

Cross-int. 207. (De bene.) What amount did you pay Godfroy for trees made by you and Lewis?

(Objected to as above.)

Ans. Five dollars a tree. I don't recollect the amount exactly.

Cross-int. 208. (De bene.) What amount did you pay him after the dissolution up to the time of settlement?

(Objected to as above.)

Ans. Five dollars per tree. I don't recollect the amount. It was settled by my note.

Cross-int. 209. How many two-incline trees did you make after dissolution and prior to settlement? State as nearly as you can.

(Objected to as above.)

Ans. I can't tell anything about the number, at least ten or fifteen, I should think; there might have been more.

Cross-int. 210. (De bene.) What have you since paid Mr. Godfrey as tariff?

Ans. Not anything, as I know of.

Cross-int. 211. Why not?

(Objected to as above.)

Ans. Because he did not keep other parties from manfacturing boot-trees as agreed.

284 Cross-int. 212. (De bene.) Do you mean to testify that, by your agreement with Mr. Godfrey, you were not obliged to pay tariff if he did not keep other parties from manufacturing?

Ans. I do.

Cross-int. 213. (De bene.) What other parties did manufacture changeable back trees? State fully.

Ans. Mr. Eames, Fillbrook & Cook, Richardson & Mavinney, and Mr. Bullard, and Mr. Lewis.

Cross-int. 214. (De bene.) How many of these manufactured two-incline trees?

Ans. That is more than I know. I think all except Eames.

Cross-int. 215. (De bene.) State, if you know, when these parties began to manufacture trees.

Ans. I think Mr. Lewis and Mr. Eames and Mr. Cook began in 1855. The others I don't recollect now. I should think it was in 1857 or 1858.

Cross-int. 216. Then, if I understand you, you are willing to testify that your obligation to pay Godfrey tariff ceased before 1856?

(Objected to as assuming what the witness has not said or implied, and because the witness is not subject to cross-examination on this point.)

Ans. I think that my obligation gave to Mr. Godfrey a reasonable time to stop others.

Cross-int. 217. (De bene.) You say your mutual obligation ceased only after Mr. Godfrey had had a suitable time to stop infringers; how long after the first of 1856 did those obligations continue?

(Objected to as last.)

Ans. Mr. Godfrey told me when I settled with him in 1856 that he would not call upon me for any more pay unless he did stop Mr. Eames.

Cross-int. 218. (De bene.) The fact is that no boot-tree made by you since February 21st, 1856, has been paid for under any patent, isn't it?

Ans. I understand that all the claims Mr. Godfrey had on me were given up when he settled the suit he had pending against me.

Cross-int. 219. (De bene.) Did you ever admit your liability to pay Godfrey tariff for boot-trees made by you since 1856?

(Objected to as irrelevant.)

285 Ans. Not unless Mr. Eames would pay.

Cross-int. 220. (De bene.) Has Eames ever paid?

Ans. Mr. Godfrey has never informed me that he has.

Cross-int. 221. (De bene.) The question is repeated.

Ans. Not that I know of.

Cross-int. 222. (De bene.) What writings passed between you and Godfrey, when the suit between Godfrey and Shumway was settled? Produce them if there were any.

(Objected to as before.)

Ans. Receipts between us, as I understood it. I have not got them. I don't know where they are.

Cross-int. 223. (De bene.) Do you mean that you took a receipt from Godfrey, and gave him one? If so, what did you did you do with your receipt?

(Objected to.)

Ans. I understood it to be a receipt. I left it on the table in Mr. Williams's office.

Cross-int. (De bene.) Why did you leave it there?

Ans. I left it with my counsel, because I supposed it was to be filed in court to show that there was a settlement.

Cross-int. 225. Wasn't it in fact an agreement to enter the case what lawyers call "neither party?"

Ans. I don't know what lawyers call it. I understoodit to be a receipt, and supposed that everything was settled.

Cross-int. 226. (De bene.) Did you in fact pay Mr. Godfrey anything near the amount he demanded?

Ans. I don't know that I paid him anything. There was a horse and carriage attached and sold; but whether it went to pay Godfrey, or to pay costs, I don't know.

E. L. SHUMWAY.

Exhibit Shumway, Cross No. 1.

COMMONWEALTH OF MASSACHUSETTS,
Worcester, County, ss:

At a superior court begun and holden at Worcester, within and for the county of Worcester, on the second Monday of December, being the twelfth day of said month, in the year of our Lord one
286 thousand eight hundred and sixty-four, by the Hon. Ezea Wilkinson, one of the justices of said court, the action of Benjamin D. Godfrey *vs.* Emory L. Shumway, copies of the papers in which case are hereto annexed, was dismissed by the court, neither party appearing to prosecute or defend the same.

In testimony whereof I have hereto set my name, and affixed the seal of said court, this 22d day of September, A. D. 1866.

[L. S.] JOSEPH MASON, *Clerk.*

[L. S.] COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

To the sheriffs of our several counties, or their deputies, greeting:

We command you to attach the goods or estate of Emory L. Shumway, of Worcester, in our said county, boot-tree manufacturer, to the value of two thousand dollars, and for want thereof to take the body of the said defendant, (if he may be found in your precinct,) and him safely keep, so that you have him before our justices of our superior court next to be holden at Worcester, within and for our said county of Worcester, on the first Monday of September next; then and there, in our said court, to answer unto Benjamin D. Godfrey, of Milford, in our said county, boot manufacturer, in an action of contract.

To the damage of the said plaintiff, as he saith, the sum of two thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your do ings therein.

Witness, Charles Allen, esquire, at Worcester, the twenty-ninth day of June, in the year of our Lord one thou and eight hundred and sixty-two.

JOSEPH MASON, *Clerk.*

287 *Action of contract.—Plaintiff's declaration.*

Superior court, Sept. 5, 1862.

WORCESTER, *ss:*

BENJAMIN D. GODFREY
vs.
EMORY L. SHUMWAY.

And the plaintiff says the defendant owes him the sum of seventeen hundred and forty-five dollars, according to the account hereto annexed.

By A. DADMUN, *Att'y.*

Account annexed.

Emory L. Shumway to Benjamin D. Godfrey, Dr.

To license or tariff on boot-tree forms.

Feb. 21, 1856, to Dec. 31, 1859.

1. 120 sets of mens', $10 per set	$1,200
2. 41 sets of boys', $5 per set	205
3. 28 sets of youths', $5 per set	140
To license or tariff on boot-tree from Dec. 31, 1859, to June 15, 1862:	
4. 20 sets mens', $10 per set	200
	1,745

Filed by leave, Sept. 6, 1862.
Att. J. MASON, *Clerk.*

Action of contract.

Superior court, September term, 1862.

COMMONWEALTH OF MASSACHUTETTS,
Worcester, ss:

Benjamin D. Godfrey, plaintiff; Emory L. Shumway, defendant.

288 I, the undersigned, defendant in the above-named action, on oath declare that I verily believe that I have a substantial defence to said action on its merits, and intend to bring the same to trial.

E. L. SHUMWAY.

WORCESTER, *ss:*

AUGUST 27, A. D. 1862.

Subscribed and sworn to, this day, before me.

HARTLEY WILLIAMS,
Justice of the Peace.

Defendant's answer.

Superior court, December term, 1862.

WORCESTER, *ss:*

BENJAMIN D. GODFREY
vs.
EMORY D. SHUMWAY.

And now comes the defendant, and answers as follows:

Upon his personal knowledge he denies that he owes or ever owed the plaintiff for license or tariff, on or for any of the items mentioned in his account annexed. And in like manner, he denies each and every allegation contained in the plaintiff's writ and declaration.

EMORY L. SHUMWAY.
By his att'y, DEWEY WILLIAMS.

Filed Dec. 24, 1862.
Att. J. MASON, *Clerk.*

Answer of the defendant to the interrogatories proposed by the plaintiff.

Superior court, August term, 1864.

WORCESTER, *ss:*

BENJAMIN D. GODFREY
vs.
EMORY L. SHUMWAY.

Ans. 1. I reside in Worcester; have resided here about 20 years; occupation, manufacturer of boot and shoe machinery.

289 Ans. 2. I know the plaintiff; have known him some twelve or thirteen years.

Ans. 3. I did not in the years 1858 or 1859 make a verbal agreement with said Godfrey, whereby I purchased from him a license to manufacture boot-trees.

Ans. 4. In September, 1855, the plaintiff came to me, and pretended to have a patent which would cover the kind of boot-tree which I was then, and for some four years previous thereto, had been manufacturing. I said to him that I knew nothing of his patent or its validity. He said if I would pay him a certain sum he would keep all other persons out of the market, and would prevent any one from manufacturing, or in any manner coming in competition with me. I said if he would do so I would pay him the sum named, but that the payment, and all claims upon me, should cease whenever he failed to do as he promised; to this he agreed.

In February, 1856, he called upon me, and I paid him somewhere between three and four hundred dollars. I have not the means of stating the exact amount. I then told him that he had not kept his agreement; that other persons in Worcester county and other places were engaged in the manufacture of the same boot-tree, and were in competition with me; and that, from that date, I should not pay him

anything more. He replied that he should not call on me for anything more unless he stopped those who were engaged in this business. This he never did.

Ans. 4. Never under any agreement referred to in plaintiff's interrogatories.

Ans. 5. I do not know.

Ans. 6. I have not.

Ans. 7. I do not.

Ans. 8. In 1860, I think, I met him on board the cars; it was the first time he had spoken upon the subject since February, 1856, the time of the payment before referred to. He said he had been having rather a hard time; that he was very short, and that a little money would help him very much; that I must have made considerable money on my boot-trees, and he thought I ought to pay him something. I called his attention to his agreement to keep all others out of the manufacture, and in case of a failure so to do, that he
290 was to make no claim upon me. He said he did not suppose he had any legal claim, but thought I would be willing to pay him something under the circumstances. This is the substance of what was said upon the subject as near as I can now remember.

Ans. 9. I presume I have stated the agreement or the substance of it to many persons, but I cannot now state to whom in particular. If I have stated the agreement it was in substance as herein set forth.

Ans. 10. No.

E. L. SHUMWAY.

WORCESTER, *ss:*

AUGUST 27, 1864.

Subscribed and sworn to before me,

HARTLEY WILLIAMS,
Justice of the Peace.

Filed August 29, 1864.
Attest: J. MASON, *Clerk.*

WORCESTER, *ss:*

June 8, A. D. 1862, at 8 o'clock A. M. By virtue of this writ, I this day attached as the property of the within named defendant, all his right, title, and interest in and to any real estate in Worcester, or elsewhere in the county of Worcester, and on the same day deposited an attested copy of this writ without the declaration, and of so much of my return as relates to the attachment of real estate in the office of the clerk of the court for said county, and on the same day attached as the property of the within defendant one horse, one carriage, and one harness, and afterwards, on the thirtieth day of the same June, left at the last and usual place of abode of said defendant, a summons for his appearance at court as within directed.

And the said Emory L. Shumway and the attaching creditor waiving, consented in writing to a sale thereof, as appears by their certificate hereto annexed. I safely kept the same for the space of four

days, and on the thirtieth day of the same June, gave notice of the time and place of the intended sale, by posting up notifications
291 thereof at the post office in Worcester, in said county, forty-eight hours before the time of sale, and said property not being redeemed on the fifth day of July, A. D. 1862, at nine o'clock a. m., at Witt & Pratt's livery stable, in said Worcester, pursuant to the said notice, I sold the said horse, carriage, and harness, by public auction, to Benjamin D. Godfrey, he being the highest bidder therefor, for the sum of one hundred and fifty dollars; from which sum I have taken seven dollars for keeping and charges of sale, and hold the balance of said proceeds, amounting to one hundred and forty-three dollars, subject to the attachment on said property.

J. B. SIBLEY,
Deputy Sheriff.

Fees service	$0 50
Travel	08
July 5th, paid B. F. Lee, for keeping horse	4 00
Posting notices and selling	3 00
	7 58

WORCESTER, *ss:*

JUNE 30TH, A. D. 1862.

We consent to your selling on mesne process, according to the provisions of the General Statutes, chapter 122, section 72, the horse, carriage, and harness attached by you on this writ.

E. L. SHUMWAY, *Debtor.*
A. DADMUN, *Att'y for Creditor.*

COMMONWEALTH OF MASSACHUSETTS, *Worcester, ss:*

The foregoing are true copies of all papers filed in said case.

In testimony whereof, I, Joseph Mason, clerk of the superior court, in and for said county of Worcester, have hereunto set my hand and affixed the seal of said court, this twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-six.

[L. S.] [Stamp.] JOSEPH MASON, *Clerk.*

292 *Exhibit Shumway, Cross No. 4.*

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of certain papers now on file in re the extension of Jarvis Howe, October 24, 1848.

In testimony whereof, I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this fourteenth day of March, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[L. S.] T. C. THEAKER.

Emory L. Shumway, a witness produced and examined in opposition to Jarvis Howe's application for extension of his boot-tree patent of Oct. 24, 1848, on oath deposes as follows:

Interrogatories proposed by F. A. Brooks, esq., counsel for Eames, opposing, &c. :

Int. 1. What is your age, residence, and business? Do you know Jarvis Howe, and how long have you known him?

Ans. My age is thirty-nine; my residence is Worcester; my business is that of boot-tree manufacturer. I know Jarvis Howe; have known him about sixteen years.

Int. 2. Did you ever work for said Howe, or a firm of which he was a member; and when did you first go to work for him?

Ans. I used to work for a firm he was a partner in. I think it was in 1847. The name of the firm was Howe, Sessions & Co.

Int. 3. What kind of business was done by Howe, Sessions & Co. when you began to work for them? What did they manufacture?

Ans. They manufactured boot and shoe tools and meat choppers.

Int. 4. What description of boot and shoe tools, mostly?

Ans. They made what they called a boot-form; what is
293 called a boot-stretcher, and turning machines, (for turning boot legs inside out,) and Read's patent screws. They were getting up a boot-tree.

Int. 5. Was the boot-stretcher called by any other name? If so, what name?

Ans. Seam rubber sometimes; I don't know of any other; sometimes called leg stretcher.

Int. 6. Do you know where the boot-stretcher came from, or where it was originally got up?

Ans. I understood it came from Stoughton.

(Answer objected to:)

Int. 7. Please look at the model marked "A" here shown, and state whether it it is like or unlike the boot-stretcher you have mentioned?

Ans. It is something like it.

Int. 8. What difference is there between this model and the boot-stretcher referred to?

Ans. The bearing in the one they manufactured was on top of the stand and not on the side.

Int. 9. Was the bearing of the first ones made on the top or on the side?

Ans. I could not say as to the first ones they made.

Int. 10. Was there any patent on these boot-stretchers?

Ans. I never knew that there was.

Int. 11. When you began work for Howe & Co., had any boot-trees, so called, been made by them; or what had been done towards making boot trees, so called?

Ans. I did not know there were any finished.

Int. 12. Did you assist in getting up the first Howe boot-tree; and what did you do about it?

Ans. I worked on patterns of the tree.

Int. 13. How many boot-trees, so called, were made while Howe remained in the business, and how many sold?

Ans. I could not tell how many there were. I should not think there were more than ten or fifteen.

Int. 14. Did they find a ready sale, and give satisfaction or not?

Ans. I understood they did not.

294 Int. 15. Whether or not, as got up by Howe, were they right in all respects for treeing boots?

(Objected to.)

Ans. They were not called so.

Int. 16. What objections existed to them as Howe left them, and what changes were afterwards made in them to improve them?

Objected to.)

Ans. They used to complain that they did not fit the boots, they could not make them look right. One change was to put on wooden feet; another was to put a lock on to hold the foot on the front; another was to put in a spiral spring so as to shut them up; they would not shut up in the old way; there was a number of improvements put on them. They used to put in a hammered spring inside the leg; there were two hammered springs.

Int. 17. The Howe patent shows several coiled springs inserted in the leg between the front and back, each spring being attached at its ends to both the front and back—as the means for collapsing or drawing together the leg of the tree, so as to remove the boot from the tree—were these springs used in the Howe tree after Howe left the firm? What kind of spiral spring was put in to improve the Howe tree? Was it a spring coiled about the stretching end and pressing the toggle joint from top towards bottom of leg?

Ans. I did not know of these springs being used after Howe left the firm. It was a spring put around the rod.

Int. 18. If the leg part of a boot-tree were made to receive the toggle joint and the cross springs, as described in Howe's patent—whether or not any material but metal could be safely employed as sufficiently strong?

(Objected to.)

Ans. I should think not.

Int. 19. Did Howe sell his interest under the patent to any one; and if so, to whom did he sell?

(Objected to.)

Ans. I understand that he did to Cyrus Bliss's agent. I mean William R. Bliss.

Int. 20. How did you so understand? How are you related to Cyrus and William R. Bliss?

Ans. William R. Bliss told me he had bought it. Mr. Sessions told me also. I married the niece of Cyrus and William R. Bliss.

Int. 21. Were the Howe trees made for sale by any one,

295 and whom, after Howe sold out to Bliss? and what connection had you with the business?

Ans. Yes, sir; by William R. Bliss, agent of Cyrus. I worked for him some of the time.

Int. 22. Who else made these Howe trees for sale down to 1854?

Ans. I think that I did, some of the time, in connection with William R. Bliss.

Int. 23. While you made them, did they give satisfaction or not to the purchasers?

Ans. They did not give very good satisfaction.

Int. 24. Who made them after you ceased to do so?

Ans. George W. Bliss.

Int. 25. Did George W. Bliss make or lose money in these boot-trees? State what you know as to this, and who told you.

(Objected to.)

Ans. William R. Bliss told me he lost money. George W. did not manufacture on his own account, but for William R. Bliss.

Int. 26. Do you know of any money being made by any one who made these trees for sale in that business?

Ans. I only know of myself. I made something at it.

Int. 27. Did you make and sell the trees on your own risk and capital, or for a certain sum allowed you for each one sold?

Ans. Part of the time I made and sold, and had so much on every one I sold.

Int. 28. Did you carry on the manufacture of these trees at your own risk and expense at all? If so, how long and with what result?

Ans. Not alone. I carried it on with William R. Bliss as partner. I don't recollect the time; I should think about a year. My impression is, we made about four thousand dollars worth of machines.

Int. 29. Did the four thousand dollars worth of machines yield any actual profit beyond the cost and expense of all kinds?

Ans. Yes; there was something left after paying expenses.

Int. 30. Were you paid a certain sum on each machine sold, as your share of the business?

Ans. Not while I was in company.

296 Int. 31. How much net profit was realized on the four thousand dollars worth of machines?

Ans. I could not tell how much. It was somewhere near a thousand dollars apiece. I believe it was a little short. This is what was left after paying all expenses.

Int. 32. Did not the trees cost to build more than half what you got for them?

Ans. I should think not.

Int. 33. Why didn't you continue the business?

Ans. One reason was, they began to be dissatisfied with them; we could not sell them so readily.

Int. 34. Were they preferred always to the old slide tree, or was the old slide tree preferred?

Ans. In some places they were preferred, and in some places the slide trees were preferred.

Int. 35. Do you know who became owner of the Howe patent after Cyrus Bliss?

Ans. I don't know by seeing the writings. Alonzo Bliss said William R. Bliss had given it to him.

(Objected to.)

Int. 36. Is Alonzo C. Bliss related to you; and whether or not did he offer to sell you the Howe patent?

Ans. He is related by marriage. He offered to sell me the Howe patent.

Int. 37. At what price did he offer the Howe patent to you? When was it, and what was said between you about your buying it? (Objected to.)

Ans. I think it was in '55. He told me I could have it at almost any price I had a mind to give him. He wanted to realize something from it, he said; wanted to know if I would give him five hundred dollars for it. I told him I did not want it for any price.

Int. 38. Why didn't you want it for any price?

(Objected to.)

Ans. Well, I was making a tree at that time I thought much better.

Int. 39. Since 1855, could the Howe trees be made and sold at any profit, or has there been demand for the Howe trees since 1855?

297 Ans. I should think not. There has been no demand that I know of.

Int. 40. Have you had any Howe trees for sale since then? If so, what did they cost you, and what did you get for them or do with them?

Ans. Yes, I have kept them for sale all the time, second-handed ones, some, and some new ones. The new ones I bought of Alonzo Bliss. I sold them all the way from five to twenty dollars.

Int. 41. Were these prices less than the cost of making the Howe trees?

Ans. They were.

Int. 42. Could any Howe trees be now sold at the cost of making them?

Ans. I could not sell them.

Int. 43. Did you ever take a license from B. D. Godfrey for making the Howe tree?

Ans. I do not know what he called a license.

Int. 44. Did you ever purchase from Godfrey liberty to make Howe patent trees?

Ans. No, sir.

Int. 45. Are the boot trees you now manufacture and sell constructed in the same manner as were the Howe patented trees?

Ans. No, sir.

Int. 46. What kind of boot-trees are you now engaged in making, and are you under any agreement to pay B. D. Godfrey a tariff on such trees; and for what did you agree to pay such tariff, and why?

Ans. What we call the William H. Upfield patent. I was to pay B. D. Godfrey if he kept others from manufacturing.

Cross-interrogatories proposed by C. Browne, esq., counsel for Jarvis Howe:

Cross-int. 1. Are the trees you make mounted swivelling trees?

Ans. They are mounted upon a bench.

Cross-int. 2. Are you acquainted with the mounted swivelling tree which Charles T. Eames makes, or has made till lately?

298 Ans. I have seen it. I understand their construction. I have had them to sell.

Cross-int. 3. How do the trees you make differ from these Eames trees?

Ans. In the working of them there is not much difference. I use two inclined planes, and he does not use but one. I put in iron into the body of my tree; his is of wood.

Cross-int. 4. Are these inclined planes one in the front and the other in the back of the tree, or are they one above the other, and both in the back?

Ans. They are one above the other, and both in the back.

Cross-int. 5. And are they so constructed that when the stretching rod carrying two corresponding cams is drawn up to a certain distance, the cams shall be disengaged from the inclines so that the back of the tree will come off?

Ans. They are so constructed.

Cross-int. 6. Did you make trees on this plan with Reuben L. Lewis, or under arrangement with him, in 1854, or thereabouts?

Ans. Not just like these. In his the front and back both have four inclined planes, two in each one.

Cross-int. 7. How long have you been making and selling such machine trees substantially as you do now?

Ans. I commenced in the summer of 1855, I think.

Cross-int. 8. Have you paid Mr. Godfrey any tariff?

Ans. I have.

Cross-int. 9. Up to what time?

Ans. I think it up to the first of 1856.

Cross-int. 10. How many trees have you made and sold since that time?

Ans. I could not tell; it appears to me it is between three and four hundred. I could not tell without looking back to see.

Cross-int. 11. You say you have agreed to pay M. Godfrey if he keeps others from manufacturing. If this application for an extension of the Howe patent is defeated, others cannot be kept from manufacturing, so far as that patent is concerned, for the future, can they?

Ans. I have not manufactured under that patent.

299 Cross-int. 12. When the Howe patent expires, nobody can be stopped from manufacturing, can they, so far as that patent is concerned?

Ans. I suppose not, by that patent.

Cross-int. 13. Does it make any difference to you under which patent Mr. Godfrey stops other manufacturers, providing he stops them?

Ans. It would not make any difference to me how he stops them, if they are stopped.

Cross-int. 14. Unless they are stopped you do not mean to pay, do you?

Ans. No, sir. (The witness here desires to make an explanation.) Godfrey was to have the privilege of having one shop to manufacture boot-trees; it was to be no nearer Worcester than Milford. Godfrey reserved that privilege.

Cross-int. 15. What part of the year 1847 was it that you went into the employ of Howe & Sessions, or Howe, Sessions & Co.

Ans. I should think it was in December; but I will not be positive.

Cross-int. 16. You do not know that any of the Howe machines were sold and paid for while he was in the company, do you?

Ans. No, I do not.

Cross-int. 17. How were the hammered springs mentioned in your seventeenth direct answer put into the Howe trees, and what was their office or operation?

Ans. They were screwed in in the inside of the tree to shut it up.

Cross-int. 18. (De bene.) And what objection do you say was found to their use?

Ans. After expanding the boot-tree to its full bigness, the spring of it would be taken out, or else they would break. I mean the spring would lose its elasticity or break.

Cross-int. 19. Do you mean that, by continued use of these springs to their full extent, they were liable to lose elasticity, and that if they were made stiff on this account they were liable to break?

Ans. They generally would give way the first time bringing them out to their full extent.

300 Cross-int. 20. When did you cease to make the Howe plan trees?

Ans. I think it was in 1854.

Cross-int. 21. Alonzo Bliss was the son of William R. Bliss, was he not?

Ans. No, sir.

Cross-int. 22. Were they related at all, and how?

Ans. They were brothers.

E. L. SHUMWAY.

Deposition of E. K. Spaulding, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is E. K. Spaulding; age, 45; reside at Worcester; flour dealer.

Int. 2. Please look at the boot-tree marked "Youths, G. D. N.," and if you ever worked for E. L. Shumway upon boot-trees of this kind, state when it was.

Ans. I worked on boot-trees of this kind for Mr. Shumway in 1856 and 1857.

Int. 3. Whether or not were the castings on which you worked in

1856 and 1857 the same or different from those seen in exhibit marked "Youths?"

Ans. I should think this was the same pattern, the same thing all through.

Int. 4. Have you any doubt about it?

Ans. I have not.

Cross-examination:

Cross-int. 1: Were Mr. Shumway's patterns alike for all sizes of trees?

Ans. I should think they were.

Cross-int. 2. Have you any doubt about it?

Ans. I have not.

Cross-int. 3. Do you know who made Mr. Shumway's castings?

(Objected to as not rebutting.)

Ans. I know who made a part of them—Mr: Wheeler, of
301 Worcester—William A. Wheeler. He also got some from Chapin's foundry.

Cross-int. 4. What part did Mr. Wheeler make?

(Objected to as above.)

Ans. I think Mr. Wheeler made the slides or heel irons. Perhaps he also made some centre pieces.

E. K. SPALDING.

Deposition of Theodore F. Beauvais, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Theodore F. Beauvais; age, 27; reside at Worcester; machinist.

Int. 2. If you worked for E. L. Shumway on boot-trees from 1858 to 1861, or thereabouts, please look at the boot-tree marked "Youth's," now shown you, and state whether any trees of that precise pattern were made while you so worked for him.

Ans. I did work for him, and I am positive that such trees as that were built during that time.

Cross-examination by J. E. Maynadier, esq.:

Cross-int. 1. Are you commonly known by any other name than Theodore F. Beauvais?

(Objected to because apparently intended to cast some suspicion on the character of the witness.)

Ans. Yes, I am, in Worcester. I am generally called Theodore F. Goodwin—that being the nearest translation of my French name; I am a Frenchman by birth.

T. F. BEAUVAIS.

302 Deposition of William P. Kinney, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is William P. Kinney; age, 39; residence at Worcester; machinist by occupation.

Int. 2. Were you employed by E. L. Shumway, of Worcester, in 1858, or thereabouts, in the manufacture of boot-trees, and for about what length of time were you so employed?

Ans. I was, for about seven or eight months, I should think.

Int. 3. Please look at the boot-tree marked "Youth's, G. D. N.," being produced by the defendant, alleged to infringe in this case, and state whether or not Mr. Shumway made any boot-trees of this precise pattern and style while you worked for him in 1858.

Ans. Yes, sir, I should think he did, of the same pattern.

Int. 4. Whether or not boot-trees then made by Shumway had the lapping brasses attached to the iron, as is seen in this exhibit.

Ans. They had.

Cross-examination:

Cross-int. 1. Where and for whom do you now work?

Ans. I work for Mr. Shumway at the present time.

Cross-int. 2. How long have you worked for him in all since 1858?

Ans. Fourteen months and a half.

Cross-int. 3. When did you begin to work for him last?

Ans. A year ago last June—the last of that month.

Cross-int. 4. In that time how many trees has Mr. Shumway made? State as nearly as you recollect.

(Objected to because not subject of direct examination, and not material, and intended to get information for outside purposes.)

Ans. I could not tell; I don't know; I never kept any run of his work; I could not tell.

303 Cross-int. 5. Has he made any?

(Objected to as above.)

Ans. He has.

Cross-int. 6. As many as a thousand?

(Objected to as above.)

Ans. I should think he had not.

Cross-int. 7. Near five hundred?

(Objected to as above.)

Ans. I should think it would come less than that.

Cross-int. 8. How near two hundred and fifty.

(Objected to as above.)

Ans. Well, I don't know. I should think less than that.

Cross-int. 9. More than a hundred?

(Objected to as above.)

Ans. Well, I could not tell how many he has made; I could not give an estimate.

Cross-int. 10. Are you willing to swear that, according to your best judgment, he has made less than a hundred?

(Objected to as above.)

Ans. I should not think he had made a hundred.

Cross-int. 11. Should you think he had made about a hundred?

(Objected to as above.)

Ans. I should think he had not.

Cross-int. 12. Should you think he had made more than fifty?

(Objected to as above.)

Ans. I should not think he had.

Cross-int. 13. Nor more than twenty-five?

(Objected to as above.)

Ans. I should think he had.

Cross-int. 14. How many sizes of trees did Mr. Shumway make while you were with him in 1858?

Ans. He made three, certainly; I am not certain whether he made child's then or not.

Cross-int. 15. Were his trees then all the same pattern as "Youth's, G. D. N.?"

Ans. The youth's and boy's were the same, and the man's were the same as we make now—the same pattern, except that then we had to file off the casting where the side brasses went on; that is, we used to square them off.

Cross-int. 16. Do you mean to swear tha, the youth's and
304 boy's patterns you then used are the same you now use, or only like them?

Ans. I should say they are the same.

Cross-int. 17. When did you last see the patterns you used in 1858, if ever?

Ans. I don't know that I ever saw the patterns.

Cross-int. 18. What did you do when you left Mr. Shumway about '58?

Ans. I went and worked about a month at Mr. Crompton's loom-works.

Cross-int. 19. Where have you worked since, up to the time you went to work for Mr. Shumway, a year ago last June?

Ans. At several places. I was in the 21st Mass. regiment for three years, from July, 1861, to August, 1864. After leaving Crompton, I worked in a cotton factory; after that I worked on instrument-reeds till I enlisted. After muster-out, I worked in general machine shop until I worked for Mr. Shumway.

Cross-int. 20. Was there any other difference between the men's pattern Shumway then used and the one he now uses?

Ans. I should think not.

Cross-int. 21. If I understand you the part filed away then, and which is not filed away now, was on each side of the casting, and along its whole length as far as the wooden part of the front extends. Am I right?

Ans. That is what I meant; on the men's.

Cross-int. 22. Explain just how the brasses set on the men's; like the brasses in the exhibit, or not?

Ans. They are not like the brasses on the exhibit. On the men's the brass set up to the wood part of the front.

Cross-int. 23. You mean so that the iron of the casting was not visible between the wood part of the front and the brass, don't you?

Ans. I do.

Cross-int. 24. Was this so in all the men's trees Mr. Shumway made, while you were with him, in 1858?

Ans. It was, so far as I recollect.

Cross-int. 25. Please state fully all the differences between the youth's pattern he then had, and the casting of exhibit youth's.

305 Ans. I don't know of any difference.

Cross-int. 26. Before you went to Mr. Shumway's in '58, state generally what you have done for the preceding five years.

Ans. The preceding four years I worked in the reed business. The three years before that I was in a general machine shop.

Cross-int. 27. You had never worked on boot-trees before you went to Shumway's shop in 1858, had you?

Ans. No, sir.

Cross-int. 28. And did not work on them again, after you left his shop, until a year ago last June?

Ans. No, sir.

Cross-int. 29. You testify as to what casting Mr. Shumway used in 1858 entirely from recollection, don't you?

Ans. I do, for I worked only on centre-piece castings at that time; I mean nothing else of any account.

Cross-int. 30. Do you believe that you are able to testify positively that the castings for youth's and boy's trees, which Shumway now uses, are the same in every respect as the castings you saw in 1858 in his shop?

Ans. I do.

Cross-int. 31. And do you believe that you would perceive a changes or alterations which might have been made in those castings?

Ans. I believe I could.

Cross-int. 32. Now are you willing to state positively that the castings for youth's and boy's, now used in Mr. Shumway's shop, are precisely like those used in 1858, and that there has been no change or alteration?

Ans. I do positively believe that they are the same.

Cross-int. 33. Are the castings now used by Mr. Shumway exactly like the ones he has used for the past fourteen months and a half?

Ans. They are precisely the same pattern?

WILLIAM P. KINNEY.

306 Deposition of Lewis Daniels, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Lewis Daniels; age, 41; reside at Grafton; cutter of sole leather.

Int. 2. If you were employed by Forbush & Wheeler, of Grafton, from 1857 to 1864, in making boots and shoes, state what kind of boot-trees they had in their shop; that is, whether or not they had such boot-trees as the one now shown you, marked "Youths?"

Ans. They did. I worked in the tree-room nearly seven years.

Int. 3. Did they have more than one such tree when you first went there, and when did they obtain more trees of this kind?

Ans. When I first went there they had only one. A year or two afterwards they got one more. Subsequently, they obtained two more trees of the same style.

Int. 4. Please look at the tree marked "Youths, G. D. N.," and state whether you ever saw it before, and where.

Ans. I never saw any other tree but what had brasses on here, except this tree. I think I have seen this tree, or one just like it, before. I saw it in Grafton, at Forbush & Wheeler's shop.

Int. 5. State when it came there, if you know, and from whom, and when you last saw it in said shop, as nearly as you can.

Ans. I can't tell the exact date; in '61 or '62, I guess. It came from Mr. Shumway. I last saw the tree at Forbush & Wheeler's the third week of April, 1864, on Monday, the day I left the shop.

Int. 6. Was this boot-tree used at that shop of Forbush & Wheeler's?

Ans. It was about one-third of the time.

Int. 7. What became of it, so far as you know?

Ans. I only know from what Mr. Forbush told me.

307 Cross-examined by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. Please read the first clause in your fourth answer, and explain more fully what you mean by "brasses on here."

Ans. The other trees had brasses on the edge of the backs, like the brasses on the backs of "C. H. T." Shumway brought a tree without brasses, like the youth's here, and I objected to it because it had not brasses, and he explained why it was better without the brasses.

Cross-int. 2. Do you mean to say that boot-trees are always made with brasses on the edge, like those on the back of "C. H. T.?"

Ans. I do not know anything about that.

Re-direct examination:

Int. 8. Please notice the heel part of the backs of the tree marked "Youth's," and state whether any mark therein enables you to identify these as the same used at Forbush & Wheeler's shop.

Ans. There is a mark there; a notch in the wood, caused by some part being loose, the wear of some loose part, the end of a rivet which projected against the wood, I should think. I identify the tree by that mark.

Re-cross-examined:

Cross-int. 3. Can you swear more definitely as to the time when Forbush & Wheeler got their youth's tree from Shumway?

Ans. I cannot.

LEWIS DANIELS.

Deposition of T. F. Brigham, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is T. F. Brigham; reside at Westborough; age, 50; in the flour and grain business.

308 Int. 2. Do you know Otis Newton, defendant in the present suit, and if you were present at the delivery to him of two boot-trees in June, 1865, by E. L. Shumway, of Worcester? Describe

said trees, especially the youth's boot-tree, and state whether it was a new tree or one not new.

Ans. I do know Mr. Newton. I was present at the delivery to him of two boot-trees in June, 1865, by Mr. Shumway; I could not state positively that that is the boot-tree, because all trees of that kind resemble each other so much. (The witness points out a boot-tree upon the table marked "Youth's, G. D. N.") I think this is the same tree. My impressions were, at that time, that it was an old tree—a second-hand tree, a tree that had been used.

Int. 3. What reasons have you for thinking this tree was an old and not a new tree? What was said by Shumway at the time (if anything,) in regard to its being new or old?

(Objected to.)

Ans. Being the foreman of Mr. Newton's shop, and Mr. Newton being away, Mr. Shumway brought in the trees and emptied them on to the floor out of the bags; I looked the trees over, more particularly to see that the feet filled the boots, than I did to examine closely into the trees. Then I looked at the trees. I came to the conclusion that they had been used, and used more or less. The feet showed, in the heel-iron, that they had been used; and there were some marks, scratches, on the leg front. The wood part had all been varnished over, or stained, I don't know how. They appeared to have been fitted up to fit the boots sent by Mr. Newton to have the trees fitted by. I think I asked Mr. Shumway what he was going to charge for the trees. He replied, fifty dollars. I said to him, "Isn't that a pretty good price for second-hand trees?" I asked him whom he had the trees of. He replied, Mr. Forbush, of Grafton; I don't know his full name. I think it was the one with Mr. Wheeler. We talked some little time together, but this is all I recollect. There were two sets of trees left; one set of boy's, and one of youth's. Mr. Pettegrew, who was at work on youth's boots at that time examined the trees very closely, and he pronounced them second-hand trees. Very soon they were put into use.

Int. 4. Whether or not before these two trees were pur-
309 chased, Mr. Newton had other like trees in use in his shop, and for how long, to your knowledge?

Ans. He had other trees like them when I went to work for him, which was November 1st, 1863.

Cross-examination by J. E. Maynadier, esq.:

Cross-int. 1. Is the youth's tree you have spoken of the same one that was used by John Llynd in Mr. Newton's shop?

Ans. It is.

T. F. BRIGHAM.

Deposition of Alden Pettegrew, taken, subscribed, and sworn to before George D. Noyes, examiner.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Alden Pettegrew; age, 51; I reside at Westborough; boot-treer by occupation.

Int. 2. If you were employed by Otis Newton, the defendant, in June, 1865, when two boot-trees with shifting backs, so called, were delivered by E. L. Shumway, state where said trees now are, or either of them, and whether they were new or second-hand when so delivered by Mr. Shumway to Mr. Newton.

Ans. I was present at the time, and in Mr. Newton's employ as a boot-treer. The boy's tree is in Mr. Newton's shop; the youth's tree is now on the table, according to my best knowledge and belief, being the same marked "Youth's." I examined them both before they were used at Mr. Newton's and after they were set up, and was fully satisfied they were second-hand trees; I discovered certain marks, bruises, and scratches on the backs, which had been partially obliterated or erased by sand paper or other means. I took off the back of the youth's tree, and discovered that the bearings of the stretching-rod on the centre piece had been somewhat worn; the dust had accumulated on the spring from being oiled, as it usually does; the lapping brasses had been worn and soiled inside; the foot slide had been worn; also, there was a slight stain of blacking on the top of the back of the leg which had been partially removed.

Int. 3. At what time were you first employed in Mr. Newton's shop, and whether or not at such time did Mr. Newton have in use in his shop any boot-trees with shifting backs, and otherwise constructed like the youth's tree before you?

Ans. I was first employed by Mr. Newton in February, 1859. He did then have such trees.

Int. 4. When and where did you first see or use boot-trees with shifting backs having two cross-heads and inclines; that is, such trees as the youth's tree here present, and where, and by whom were they made?

Ans. In the winter of 1854—in January or February of 1854, at Grafton. They were made by E. L. Shumway; at least, they were bought of him. They were used in the shop of C. W. Forbush. I was employed there then; had been there since January, 1851. Forbush had only one tree of the kind in use at that time.

Int. 5. If you had any occasion to see Mr. Shumway in regard to that tree owned by Mr. Forbush, state when it was, and why and where you saw Mr. Shumway, and what was done by you.

Ans. I had occasion to carry the tree to Worcester to have another set of feet made by Mr. Shumway, in the spring of 1854. I then saw Mr. Shumway, and got the feet made by him. I found Mr. Shumway at his shop in Merrifield's building, at Worcester.

Int. 6. Whether or not this shop or building of Merrifield's was afterwards destroyed by fire, and when, if you know?

Ans. It was burned in the month of June; I can't tell the year. I was in Vermont at the time the building was burned. I don't think the fire was more than a year after I saw Mr. Shumway; I mean to say I think it was in 1854 or 1855.

Int. 7. How long did Mr. Forbush continue to use that boot-tree, or others like it?

Ans. I left him in the spring of 1856. He used the tree (he had but one of men's size) up to the time I left; at that time he had two others, a youth's and a boy's—three in all. Forbush was a boot and shoe manufacturer, and now resides in Boston.

311 Cross-examined by J. E. Maynadier, esq., solicitor for complainant:

Cross-int. 1. Did you set up the youth's tree you have referred to in Mr. Newton's shop?

Ans. I did not; I put it in the socket to take the back off.

Cross-int. 2. Was there a new stand made for this tree?

Ans. Not at the time it was first used.

Cross-int. 3. Who used this tree in Mr. Newton's shop before Mr. Llynd was put to work on it?

Ans. No one.

Cross-int. 4. How do you fix the date when you first saw the man's tree you have referred to in Mr. Forbush's shop at Grafton?

Ans. By referring to my account with my treers.

Cross-int. 5. What is the date shown by the account, and where is the account now?

Ans. The account is at home, at my house in Westborough. I can't give the exact date, the day or month. The account will show it, but I can't give it now.

Cross-int. 6. Will you bring that account to the magistrate, so that we can see it?

Ans. I will, if it's necessary.

Cross-int. 7. Who owned that tree?

Ans. Forbush owned it, I suppose.

Cross-int. 8. How many inclines and cross-heads were in that tree?

Ans. Two; two inclines and two cross-heads.

Cross-int. 9. How many backs did it have?

Ans. Two, I think.

Cross-int. 10. Was that kind of tree then new to you?

Ans. It was.

Cross-int. 11. Did it have a spiral spring, like that in the youth's tree before you?

Ans. I think it did.

Cross-int. 12. Who worked on this tree?

Ans. The first man who worked on it was Elias Burnett, I think. I worked on it myself some time; then Nelson Cheney; then Eleazer K. Whitney. There were no others while I was there.

312 Cross-int. 13. Do you know where these men, or any of them, now are?

Ans. I do not.

Cross-int. 14. Were there any other men employed in that shop between Jan., 1854, and the time you left; who were they, and where are they now, if you know?

Ans. I am not able to say without referring to my book. The book will show.

Cross-int. 15. Did you know Mr. Shumway at that time?

Ans. I did.

Cross-int. 16. Did he bring this tree to the shop?

Ans. My impression is he did not.

Cross-int. 17. Who did bring it?

Ans. I don't know.

Cross-int. 18. What was Mr. Shumway's business in 1854?

Ans. I don't know any further than that I saw him making and repairing boot-trees at his shop in Merrifield's building.

Cross-int. 19. In what part of the building was his shop?

Ans. It was up stairs, (can't say whether one or two flights,) on the east side of the building.

Cross-int. 20. What kind of trees did Mr. Forbush use before he got this man's tree?

Ans. He had what we called the brass tree, (only one,) and some old-fashioned slide trees.

Cross-int. 21. When did he get this brass tree?

Ans. I think in 1851; a treer brought it there.

Cross-int. 22. Did you ever see an Upfield tree?

Ans. Not that I know of. I never saw any that went by that name.

Cross-int. 23. Did a table come with this man's tree?

Ans. It did.

Cross-int. 24. How long had you been a treer before you went to Mr. Forbush's shop?

Ans. I commenced in May, 1850.

Cross-int. 25. Were there any other trees in Grafton like this man's trees in 1854?

Ans. Not to my knowledge.

313 Cross-int. 26. Did you calculate to know pretty nearly what kind of trees were in use among boot-treers?

Ans. I knew generally in my own town, Grafton, but no further.

Cross-int. 27. When were these trees introduced generally in Grafton.

Ans. I can't tell that. I left the State in 1857 and there were only a few there then.

ALDEN PETTEGREW.

314 COMPLAINANT'S PROOFS.

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof, I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninety-first.

[L. S.] T. C. THEAKER.

(I. 5, page 229.) Be it known that I, Reuben L. Lewis, formerly of Milford, but now of Worcester, Massachusetts, pursuant to my

agreement, dated July 26th, 1854, with Benjamin D. Godfrey, of said Milford, and duly recorded in the Patent Office, and in consideration of one dollar to me paid, the receipt whereof is hereby acknowledged, do hereby bargain, sell, assign, and confirm unto the said Godfrey, his heirs, executors, administrators, and assigns, the letters patent of the United States of America issued to me, the said Lewis, for improvement in boot-trees, and dated March 2d, 1858, and numbered 19,508, and the invention thereby patented and secured, or intended so to be—

To have, hold, and enjoy the same as fully and exclusively as I could do had this assignment not been made.

315 Witness my hand and seal this fifteenth day of June, eighteen hundred and fifty-nine.

[SEAL.] REUBEN L. LEWIS.

Witness:
J. GILES.

COMMONWEALTH OF MASSACHUSETTS, *ss:*

JUNE 15TH, 1859.

Then personally appeared the within named Reuben L. Lewis, and acknowledged the within instrument by him subscribed to be his free act and deed.

Before me,

J. GILES,
Justice of the Peace for said County of Suffolk.

Assignment of B. D. Godfrey to Jarvis Howe.

For and in consideration of the sum of twenty-five dollars to me in hand paid by Jarvis Howe, of Milford, in the Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, I, Benjamin D. Godfrey, of said Milford, being the assignee by deed of one R. L. Lewis, dated 15th of June, 1859, of all said Lewis's right, title, and interest in, to, and under a certain improvement in boot-trees, and United States letters patent therefor granted and secured to said Lewis, dated 2d March, 1858.

Have sold, assigned, and set over, and do hereby sell, assign, and set over to the said Howe, his heirs, administrators, and assigns, all my right, title, and interest in, to, and under said improvement and letters patent, and any extension thereof:

To have and to hold to the said Howe, his heirs, administrators, and assigns, to his and their sole use and behoof, to the full end of the term for which said letters patent are granted or may be extended, as fully and entirely, to all intents and purposes, as the same might have been held and enjoyed by me if this instrument had not been made.

316 Witness my hand and seal this second day of January, anno Domini 1865.

[SEAL.] BENJAMIN D. GODFREY.

In presence of—
R. L. LEWIS.
[stamp.]

The above right is sold to Jarvis Howe, and made subject to the payment of three notes, viz., one dated January 2d, 1865, twelve months, for $325 and interest; one January 2d, 1865, fifteen months, for $325 and interest; and one January 2d, 1865, for $350, eighteen months and interest. In case of failure of the above notes being paid, then it is understood the right shall revert to said B. D. Godfrey the same as though no sale had been made.

B. D. GODFREY.
JARVIS HOWE.

Witnessed by—
R. L. LEWIS.

Assignment of R. L. Lewis to Jarvis Howe.

For and in consideration of the sum of twenty-five dollars, to me in hand paid by Jarvis Howe, of Milford, in the Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, I, R. L. Lewis, of said Milford, being the inventor of a certain improvement in boot-trees, and United States letters patent therefor, dated 2d March, 1858.

Have sold, assigned, and set over, and do hereby sell, assign, and set over to the said Howe, his heirs, administrators, and assigns, all my right, title, and interest in, to, and under said improvement and letters patent, and any extension thereof:

To have and to hold to the said Howe, his heirs, administrators, and assigns, to his and their sole use and behoof, to the full end of the term for which said letters patent are granted or may be
317 extended, as fully and entirely, to all intents and purposes, as the same might have been held and enjoyed by me if this instrument had not been made.

Witness my hand and seal this second day of January, anno Domini 1865.

[L. S.] R. L. LEWIS.

In presence of—
B. B. GODFREY.

[Stamp.]

U. S. PATENT OFFICE.

Received and recorded August 18th, 1865, in liber A, 8, page 157, of transfers of patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[L. S.] T. C. THEAKER,
Commissioner of Patents.

318 On the 25th day of April, A. D. 1866, the following decree was filed, viz:

U. S. circuit court, district of Mass., April 25th, 1866, in eq.

JARVIS HOWE
vs.
OTIS NEWTON.

After hearing the parties by their counsel, upon a motion for an interlocutory injunction, it is ordered that a writ of injunction be issued, enjoining the defendant herein, conformably to the prayer of the complainant's bill, from using or selling a certain boot-tree, by him purchased in June, 1865, of one E. L. Shumway, of the size called a youth's tree, until the further order of the court.

By the court.

JOHN G. STETSON,
Clerk pro tem.

The cause was thence continued from term to term to the October term, A. D. 1866, when, on the fifteenth day of November, the following final decree was entered, viz:

Final decree.

United States circuit court, district of Massachusetts, Nov. 15th, 1866, in eq.

JARVIS HOWE
vs.
OTIS NEWTON.

319 Upon final hearing of this cause, upon the pleadings and proofs, and after argument of counsel on either side, and consideration by the court:

It is ordered, adjudged, and decreed by the court, on motion of complainant's counsel, that the letters patent granted to Reuben L. Lewis, March 2d, 1858, in said bill of complaint mentioned, are good and valid, and that the said defendant Newton be perpetually enjoined from making, using, or vending to others to be used, any one or more boot-trees, embracing the invention described in said letters patent, not including any boot-trees made before June, 1862.

And inasmuch as the complainant claims only nominal damages, the court doth further order and decree that no account is necessary, and that the said complainant do recover of the defendant, Newton, the sum of one dollar, as such damages for the use of one boot-tree, embracing the invention described in said letters patent, in violation of the exclusive right of the complainant, secured to him by the letters patent aforesaid.

And the court doth further order and decree that the said complainant do recover of the defendant, Newton, the costs of this suit, taxed at twelve hundred eighty-five dollars and twenty-five cents.

Whereupon the said plaintiff, then and there in open court,

claimed an appeal to the Supreme Court of the United States, to be holden at Washington on the first Monday of December next, and give good and sufficient security to prosecute their appeal with effect, and to answer all damages and costs if he shall fail to make good his appeal, which security was approved by the court, and the said appeal was allowed accordingly.

320 By the court.

EDWIN T. NASH,
Clerk pro tem.

A true record.
Attest:

EDWIN T. NASH,
Clerk pro tem.

I, Edwin T. Nash, clerk pro tempore of the circuit court of the United States within and for the first circuit and district of Massachusetts, do certify that the above is a true copy of the record of the cause between Jarvis Howe, complainant, *vs.* Otis Newton, in this court determined.

In testimony whereof I have subscribed my name and affixed the seal of said court, this twenty-eighth day of November, A. D. 1866, and of the independence of the United States the ninety-first.

[SEAL.] EDWIN T. NASH,
Clerk pro tem.

321 Know all men by these presents, that we, Otis Newton, of Westborough, in the district of Massachusetts, as principal, and Charles H. Tilton, of Ashland, and Hamilton B. Fay, of Worcester, both in said district, as sureties, are holden and stand firmly bound and obliged unto Jarvis Howe, of Milford, in said district, in the full and just sum of twenty-six hundred dollars, to be paid unto the said Howe, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, dated the twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-six.

The condition of this obligation is such, that whereas lately at a circuit court of the United States, holden at Boston, in and for the district of Massachusetts, on the 15th day of November current, in a suit in equity depending in said court, between the said Howe, as complainant, and the said Newton, as defendant, a decree or judgment was rendered against the said Newton, and the said Newton has in due form of law taken an appeal from said decree or judgment to the Supreme Court of the United States for the purpose of reversing said decree.

Now if the said Newton shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make good his said appeal, then the above obligation to be void; else to remain in full force and virtue.

[L. S.] OTIS NEWTON.
[L. S.] C. H. TILTON.
[L. S.] HAMILTON B. FAY.
Witness: F. A. BROOKS.

United States circuit court, district of Massachusetts, October term, viz: Nov. 26th, 1866.—In eq.

HOWE
vs.
NEWTON.

The foregoing bond is approved and allowed as good and sufficient.

JOHN LOWELL,
District Judge.

Approved:

NATHAN CLIFFORD,
Asso. Jus. Sup. Court U. S.